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ABSTRACT

These House hearings deal with a number of similar bills prohibiting the sexual exploitation of children and the transporting in interstate and foreign commerce of photographs of film depicting such exploitation. These practices, including physical sexual abuse of children of both sexes and all ages, are seen to be proliferating. The hearings attempt to establish the breadth and depth of such practices. They also deal with a number of related questions, such as what the causal factors are, and whether financial inducements play an important role in attracting children to these practices. Statements from expert witnesses, as well as a number of supporting documents, are included. (Author/BP)

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SEXUAL EXPLOITATION OF CHILDREN

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

SEXUAL EXPLOITATION OF CHILDREN

MAY 23, 25, JUNE 10, AND SEPTEMBER 20, 1977

Serial No. 12

U S DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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Printed for the use of the Committee on the Judiciary

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CONTENTS

HEARINGS HELD ON

Page

May 23, 1977 1
May 25, 1977 55
June 10, 1977 133
September 20, 1977 221

Opening statement of Hon. John Conyers, Jr., for hearing of September 20, 1977 221

WITNESSES

Benson, C. Neil, Chief Postal Inspector, U.S. Postal Service 175
  Prepared statement 168
Densen-Gerber, Judianne, J.D., M.D., F.C.L.M., president, Odyessey Institute 42
  Prepared statement 39
Dickerson, G. R., Acting Commissioner, U.S. Customs Service, Department of the Treasury 211
  Prepared statement 211
Fahringer, Herald Price, defense attorney representing publisher of Hustler magazine 261
  Prepared statement 266
Ferber, Lenor M., assistant prosecuting attorney, Genesee County, Michigan 92
Florence, Heather Grant, communications and media committee, American Civil Liberties Union 121
  Prepared statement 118
Flynt, Larry, publisher of Hustler magazine 261
Gemignani, Robert G., first assistant State's attorney, Winnebago County, Rockford, Ill 303
  Prepared statement 305
Keeney, John C., Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice 134
  Prepared statement 135
Kildee, Hon. Dale E., a Representative in Congress from the State of Michigan 73
Leonard, Robert F., president-elect, National Association of District Attorneys 92
  Prepared statement 74
McClory, Hon. Robert, a Representative in Congress From the State of Illinois 56
Maddy, Kenneth, assemblyman, California Legislature, and Chairman of the Assembly Committee on Criminal Justice 222
  Prepared statement 225
Martin, Lloyd H., investigator, Los Angeles Police Department 59
  Prepared statement 57
Mikulski, Hon. Barbara A., a Representative in Congress from the State of Maryland 194
Murphy, Hon. John W., a Representative in Congress from the State of New York 159
  Prepared statement 165

Page
Nestande, Bruce, assemblyman, California Legislature 222
Nicholson, Donald, Department of Justice 134
Osanka, Frank, Associate Professor of Social Justice and Sociology, Lewis University 4
  Prepared statement 18
Parrish, Larry E., former assistant U.S. attorney, Memphis, Tenn. 240
  Prepared statement 241
Rembar, Charles 33
  Attachments to testimony 23
Similes, Kurt, Manager of Prohibited Mailings Branch, U.S. Postal Service 175
Sneed, Michael, accompanied by George Bliss and Ray Moseley, repsenting the Chicago Tribune 109
Wier, Hon. Richard R., Jr., Attorney General of Delaware 278
  Prepared statement 283
Wilens, Philip, Chief, Government Regulations, and Labor Section, Department of Justice 134
Wooden, Kenneth, Director, National Coalition of Children's Justice 202

APPENDIXES

Appendix A.—Present Law

A-1 Federal Obscenity Statutes 313
A-2 Analysis of Existing State Laws on Sexual Child Abuse 321
A-3 Analysis of State Law by the National Conference of State Legislatures 326

Appendix B.—Statements for the Record

B-1 Ms. Barbara Scott, Motion Picture Association 329
B-2 Mr. Robin M. Lloyd 330
B-3 Mr. Stephen P. Hutchinson 333
B-4 Hon. John M. Murphy 334
B-5 Hon. Peter W. Rodino, Jr. 339
B-6 Hon. Henry J. Hyde 340
B-7 Hon. Bob Wilson 341
B-8 Dr. Melvin Anchell 342
B-9 Hon. Romano Mazzaoli 347
B-10 Hon. James M. Jeffords 347
B-11 Marriane E. Cahill, National Council on Crime and Delinquency 355

Appendix C.—Reports on Pornography

C-1 "The Rockford Papers," April, 1977 389
C-2 "They Have No Voice," Marjorie Margolies 408
C-3 "Obscenity—Forget It," Charles Rembar 416
C-4 "Child Porn," State Government News 420

Appendix D.—Selected Newspaper Reports of Incidents of Sexual Abuse of Children

D-1 Child's Garden of Perversity 423
D-2 Child Porn: Is the Issue 1st Amendment Freedom? 424
D-3 Child Pornography: Sickness for Sale 428
D-4 Child Sex: Square Block in New Town Tells It All 431
D-5 Chicago is Center of National Child Pornography 433
D-6 U.S. Orders Hearings on Child Pornography 436
D-7 How Ruses Lure Victims to Child Pornographers 437
D-8 Dentist Seized in Child Sex Raid; Carey to Open Probe 441
D-9 Boys Farm Scandal 442

Appendix E.—Correspondence

E-1 Response from State Attorneys General 443
E-2 Letters from Members of Congress 456
E-3 Letters from Church Groups and Practitioners 457
E-4 Miscellaneous 458

SEXUAL EXPLOITATION OF CHILDREN

MONDAY, MAY 23, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2237, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the subcommittee] presiding.

Present: Representatives Conyers, Holtzman, Gudger, Volkmer, Ertel, Ashbrook, and Railsback.

Staff present: Hayden Gregory, counsel; Leslie E. Freed, assistant counsel; and Thomas N. Boyd, associate counsel.

Mr. CONYERS. Good morning. The Subcommittee on Crime is beginning its hearings on a number of quite similar bills prohibiting the sexual exploitation of children and the transportation in interstate and foreign commerce of photographs of film depicting such exploitation. Considerable information has already come to the attention of the subcommittee regarding the rapid proliferation of these practices, which include physical sexual abuse of children of both sexes and virtually all ages. In addition to providing criminal sanctions for the sexual abuse of children, the bills before us also proscribe widespread accompanying practices of photographing and filming actual and simulated sexual acts involving children and distributing the products in interstate commerce. It is clear that a considerable number of the persons purchasing and otherwise obtaining these photographs and films are themselves using them in connection with their own acts of sexual abuse of children, further widening the vicious circle of physical and photographic abuse.

The perpetrators of these acts use inducements such as money, drugs, and representations of friendship to entice their young victims. In some instances, even parents are inducing or permitting their own children in these practices; such conduct on the part of persons in place of parents is even more common.

As might be expected, these photographs and films are being distributed through existing outlets that specialize in pornographic materials. However, there is growing evidence that child abusers and other persons desirous of receiving these photos and films are developing their own production and distribution network. This usually takes the form of a cottage industry operating out of the trunk of a car or a single post office box, but, increasingly, the operations are growing larger, better financed, more sophisticated, more diversified—and more difficult to identify, apprehend, and successfully prosecute. In many cases, it is not just the photos and films that are moved in interstate commerce, but the children themselves. In fact, the traffic of children has become international, as in the case of smuggling of children from Mexico for such purposes. These children, who exist virtually without identity in this country, are the most vulnerable, for they could be eliminated and their disappearance go unnoticed here, an occurrence which is not unprecedented.

The subcommittee will hold several days of hearings on this subject. In these hearings, we will attempt to establish the breadth and depth of the abusive practices sought to be proscribed by the bills before us. An essential element of this aspect of our inquiry will be the quest for answers to a number of specific questions that need to be answered if we are to understand the true nature and extent of the problem and to make informed decisions on the need for additional legislation.

Some questions include: Are these abusive practices in fact growing like wildfire, or is the appearance of such increases in large part due to the fact that public attention has at last been focused on practices which have long existed but have been ignored or attention to them suppressed? If the practices are rapidly proliferating, what are the casual factors contributing to this? Is the problem we are addressing really a monolithic one, or is it in fact three distinct and separable problems of sexual child abuse, prostitution, and pornography? Similarly, is the issue of the seduction of an 8-year-old child by a foster parent different from that involved in the willing sexual participation by teenagers?

Several questions concerning the contribution of family background of both the children and the adults involved in these practices ought to be addressed. What contribution do factors such as parental unemployment, breakdown of family and marriages, and physical or emotional abandonment of children have on their vulnerability to these practices, both as a victim and, later in life, as an abuser?

Likewise, it can be asked how strong a factor are financial and other material inducements in attracting children to these practices? Some persons who have concerned themselves with these matters are convinced that material attractions are quite significant in inducing children into such conduct; other students of the problem assert that children care very little about money, but are primarily looking for happiness, security, and love, and that it is the extension of these nonmaterial rewards—real or pretended—that induce them in some of their conduct. In an even broader sense, we need to examine how cyclical movements of our entire economy impact upon this problem area, through such indirect influences as the strain and stress placed upon individual family units, and through more direct influences such as reducing the employment opportunities for younger teenagers, who are in times of economic decline faced with adult competition even for the lower paying and part-time jobs they ordinarily claim.

The most essential question, in my view, which this subcommittee must address—in the first instance by this subcommittee and ultimately by the Congress—is, of course, whether additional Federal criminal legislation is needed. We will examine this need as carefully, objectively, and thoroughly as we can.

I do feel, however, that a general cautionary observation, one that is always applicable, but particularly so here, needs to be made. This is that establishing that objectionable conduct—even revolting conduct—is taking place does not necessarily establish the need for new Federal criminal legislation. The solution may lie, as our evidence may point out, for example, in better enforcement of existing Federal criminal laws; there are, of course, several already on the books which may be applicable to the practices in question.

Similarly, existing State and local laws may, with improved enforcement, prove adequate, or better use of a combination of Federal, State, and local laws. We have frequently seen that citizen indignation and mobilization have successfully demanded that governmental action be taken, and that inadequately used existing laws have then proven adequate; we will be examining whether that potentiality is present here. Certainly another possibility is that the most appropriate action is additional State and local legislative action. Indeed, provision of criminal law is for the most part the province of the States. Federal criminal law is the exception, rather than the rule, and a case must be specially made for each exception to this rule.

A final possibility exists, one that appears to have been overlooked in the current array of legislative proposals. This is that additional laws may be needed, perhaps even Federal laws, but perhaps not criminal laws. If we have learned anything from the $5 billion spent by the Law Enforcement Assistance Administration over the last 8 years, it is that the solution to crime in our society cannot be found in the criminal justice system. We may find, similarly, that the solution to problems of sexual abuse and exploitation of young people perhaps does not lie in increased criminal laws, but rather in approaching the problem through increased and improved attention in the areas such as child care, education, mental health, family support, juvenile delinquency facilities, and employment. This is not to suggest that we begin these hearings with a predisposition against additional congressional criminal legislation, but only to emphasize that we approach them with no prejudgment for or against.

Today we will hear from Prof. Frank Osanka, of Lewis College in Illinois, who is one of the country's leading authorities on the problem of sexual abuse and exploitation of children. Our second witness is Dr. Judianne Densen-Gerber, founder of the Odyssey Institute in New York City. Dr. Densen-Gerber, a psychiatrist by profession, can aptly be described as a crusader on this issue; she, like Professor Osanka, has been at the forefront of those attempting to call attention of the public to the magnitude of this problem. Our final witness today will be Charles Rembar, attorney from New York, with extensive experience on the subject, who has practiced and published in the area of obscenity and the law relating thereto.

On Wednesday, we will have a police officer, a representative of the National District Attorneys Association, the American Civil Liberties Union, and Members of Congress who may be inclined to testify in support of their legislation.

Professor Osanka, before us, is associate professor and director of the undergraduate program in the Institute for Studies and Social Justice at Lewis University. He has had experience in State and Federal government, particularly as acting director of the Governor's office in human resources in Illinois, has participated in numerous national conferences concerning child abuse and neglect and has presented panels and interviews and written works on this subject to a high degree.

We welcome you, Professor Osanka. We have a prepared statement on your part which will be, without objection, incorporated into the record, so that you can begin a summary and further elucidation of your views on the matters that brings the the subcommittee here, and then we will be open to comments and questions from the members of the subcommittee. Welcome.

TESTIMONY OF FRANK OSANKA, ASSOCIATE PROFESSOR OF SOCIAL JUSTICE AND SOCIOLOGY, LEWIS UNIVERSITY, ILLINOIS

Mr. Osanka. Thank you very much. My name is Frank Osanka, associate professor of social justice and sociology at Lewis University, in Glen Ellyn, Ill.

I think it is important to point out in the context of these hearings that my mother died the day I was born, my father a few years later, so I was raised in the foster care and institutional care systems, and, as such, I became street-sophisticated far earlier than I became intellectually sophisticated. I think it is important to establish that base line because we are dealing with, in many cases, vulnerable children who are dependent on the child care systems of the United States.

The act and the depiction of the act of children in explicit sexual interaction is a clear case of child abuse and/or child neglect. Existing child abuse and neglect statutes should be strenghened to provides strong criminal penalties for all adult participants, from the camera person to the "adult" bookstore clerk. The law should be so specific that even the act of selling such pornography be interpreted as a party to child abuse and neglect. I realize that these are extreme measures, but the socially corrupting nature of child pornography and the current inability of the criminal justice system to stop it, demand strong protective legislation. In my view, a person who purchases child pornography is a party to child abuse since his purchase will insure a profit for the pornographer and thereby guarantee abuse of additional children through the production of new items. The purchase is also a reward to the pornographer for the child abuse he has already commissioned.

The incidence of child abuse and/or child sexual abuse is on the rise in the United States, and this form of social deviance will be made worse by the introduction and widespread distribution of various forms of pornography utilizing children as the principal sex object. Such materials, in my mind, represent a socially disintegrating assault upon basic moral principles of American society. More immediate, child pornography is a clear case of child abuse and neglect with the potential for immediate and long-term damage to the children, and perhaps the adult readers, involved.

As a concerned citizen, a responsible scholar, and a startled father of four, I urge the Congress of the United States to take immediate remedial action to provide adequate legal provisions guaranteed to secure maximum protection for American children from this insidious commercial exploitation of children's vulnerabilities which, at the same time, clearly is child abuse and/or neglect. I urge the designer of such legislation to go to great length to insure that the sexual use of children in pornography be viewed as child abuse and/or neglect. H.R. 3913, Child Abuse Prevention Act, which is now under consideration by the United States Congress, seems so directed.

Legislation must take care to word protective laws regarding the sexual abuse of children in pornography with such precision that time-consuming, and often futile, debates on the prevailing definitions of obscenity and pornography be avoided. Such debates do not provide protection for the victimized and often traumatized child. The sexual abuse of children in pornography is demonstratably child abuse and/or neglect, and is a clear danger to the dependent children involved and to the basic moral fiber of the American society. Children in American society are conditioned to obey adults and very young children operationally do not have the right of refusal. Persons who coerce children into pornographic activities are violating the civil rights of these children. The sexual abuse of children for commercial pornographic purposes is not guaranteed by the first amendment. Some may debate the degree of obsenity that is involved in the sexual exploitation of children, but none can deny that such insidious manipulations are clearly child abuse and/or neglect.

Offenders under this definition must be vigorously pursued and severely punished. While I personally favor punishment coupled with clinical treatment of individual child sexual molesters, I urge the provision of strong penalties for American pornographers convicted of using children in pornography. Further, serious penalties should be provided for the importation and exploitation of child pornography. In brief, protective legislation in this area must take the profit out of child pornography. It is not social or cultural need, but individual greed that has given birth to the wholesale introduction of child pornography. In my view, Ellen Goodman's words reflect the majority opinion of Americans when she says, "This is not a first amendment issue. It is not a matter of legislating the sexual fantasies of adults. It's a matter of protecting the lives of the young models."—Chicago Sun-Times of March 15, 1977, p. 32.

I suspect that child pornographers hope that the judicial system gets bogged down in lengthy debate over the first amendment and obscenity definitions, thereby postponing, perhaps for years, meaningful action against child pornography. The result, of course, will be an avalanche of depictions of the sexual abuse of children.

With all due respect to men and women legislators, I would urge you to avoid the very understandable inclination to decline from a personal examination of representative samples of child pornography. It is a painful, sickening, and often very sad experience, but you are obligated to view these items in private to be satisfied in your own mind that none of this material realistically contains any cultural or scientific value. Through such an examination you will fully appreciate the challenging psychological and social implication of most examples of child pornography.

On February 4, 1977, Dr. Judianne Densen-Gerber and I held a closed press conference in the Executive House Hotel in Chicago. The assembled newspersons, many of them hardened veterans of the "crime beat," reacted emotionally by expressing shock and verbalizing anger. Indeed, a tape recording of the press conference indicates that one Chicago Sun-Times columnist and popular "talk show" hostess said:

> I'd like to just say that it is the worst thing I have ever seen in my entire life and I wish they (child pornographers) were all dead.

After the press conference, many of the assembled newspersons expressed their concerns in their respective media, and some became active crusaders for public awareness and public demand for protective legislation against the sexual molestation of children. For example, the people in the Chicagoland area owe a debt of gratitude to Roger Simon, of the Chicago Sun-Times; Mike Kline, of the Chicago Sun-Times; Bob Wiedrich, of the Chicago Tribune; and the Chicago Tribune's child pornography/prostitution investigative team made up of George Bliss, Michael Sneed, and Ray Moseley.

Responsible citizens have learned of child pornography and have demonstrated their disapproval through press conferences, TV, and radio, and by physically demonstrating outside of "adult bookstores" that sell child pornography. The press has investigated and responsibly reported this new form of social degenerateness. The elected legislation must act now. In my view, local, State and Federal legislators must now take the ball and run toward the goal of adequate protection for children from sexual exploitation and provide strong criminal penalties for all guilty of this new form of child abuse.

I began researching sexual abuse of children last year in seeking data for my special 3-credit-hour course at Lewis University, Glen Ellyn, Ill., entitled "Child Abuse and Neglect Prevention and Treatment." Scholarly research into the sexual abuse of children usually takes into consideration intra-family sexual abuse (incest), molestation by strangers, and child prostitution. However, in the last 2 years there has been a massive introduction of pornographic materials depicting children in explicit sexual acts with each other and with adults. Such materials constitute a fourth, and heretofore unsuspected, type of sexual abuse of children. Many of my social justice students are active law enforcement officials, and they began to bring confiscated examples of child pornography to class. My research and their samples so startled me that I initiated my own public awareness campaign through radio and television "talk shows" and through cooperation with the newspapers and law enforcement agencies. More shocking than even the crass nature of the child pornography, itself, was the discovery that there is a total lack of protective laws or that the existing laws are so vague that meaningful prosecution is not possible.

My aim was and is to heighten public awareness, mobilize public disapproval against the child pornographer, and to urge voters to demand the enactment of protective legislation.

Let's be clear what we are talking about. I am referring to books, pamphlets, playing cards, and 8mm films which vividly depict children in sexual poses and/or in explicit sexual acts with each other or with adults. Much of the materials have clear themes of sadomasochism. The pamphlet, "Child Discipline," is a prime example of this theme. "Child Discipline" advocated adult sexual satisfaction through the spanking of children. It provides both written and pictorial depictions of adults spanking children.

The theme of sadomasochism prevails in much of the material. The children are represented as powerless and the adults all-powerful. The dominant theme is that sexual abuse of children is enjoyable and socially sanctioned by the sexually liberated members of society.

It is interesting to point out that the same themes prevail in a monthly cartoon in Hustler Magazine. I would like to draw attention to this cartoon. Hustler Magazine has a monthly installment of "Chester, the Molester." (Attachment X). It is a full-page color depiction of the intent of sexual molestation of children. If I may briefly describe the Easter installment, in that installment is a picture of a public park scene where children are on an Easter egg hunt. The depiction shows a little girl following a trail of Easter eggs. When she turns the corner, the trail leads to the bushes where Chester the Molester is sitting in a rabbit outfit with a baseball bat and his testicles laying on the grass colored with different colored spots, and it is clear that the last "eggs" will be Chester's testicles.

The issue of March 1977 shows a typical playground scene. The scene involves a child, young girl, going down the slide, her dress flying in the air, her panties showing, and Chester the Molester has his chin at the bottom of the slide with his body hidden under the slide and his tongue is wiggling at the bottom of the slide. I would like to point out to the committee that the publisher of Hustler has been appearing on national TV and making statements that he does not approve the use of children in pornography. I suggest that the implications of these so-called cartoons, while not physical depictions of children being sexually abused, are in some ways sanctioning of the sexual abuse of children. They also are making fun of a great many of the legitimate fears of parents that their children can be molested by strangers where, in fact, according to the record, children are molested by strangers, and that is in public places, in particular playgrounds. Each issue has the "Chester the Molester" series. They also have an ad for "Chester the Molester" T-shirts. I won't read the description of the ad, but it is in the public record. I would like to express for the record some concern of another ad that is published in Hustler Magazine. The National Committee for the Prevention of Child Abuse—Chicago has purchased an ad in Hustler Magazine, as they have in other magazines, to heighten public awareness of the need to control abuse of children (attachment X).

I question the effectiveness of such an ad in connection with the types of material, particularly "Chester the Molester" and the ad for the T-shirts, which illustrate or relate to the sexual molestation of children.

I distributed the ad along with the other material from Hustler to my class of 80 students. I then asked them to discuss the materials. They placed the ad for the prevention of child abuse, placed by the National Committee for the Prevention of Child Abuse—Chicago, in the same category as the ad for Chester the Molester T-shirts. They did not take the ad seriously. They assumed the ad was the same as the majority of ads in Hustler Magazine. I believe that the National Center on Child Abuse and Neglect—Chicago receives some support from Department of Health, Education, and Welfare.

Special attention should be given to the potential damage this kind of child abuse can have on the children involved. I hope you will ask me about specific projects during the questions-and-answer session. In the meantime, the following chart and attachment XI will give you some idea where the pornographers get the children that they exploit.

[The information follows:]

CHART—HOW ARE CHILDREN RECRUITED

Runaways—(bewildered, without money, afraid, and lonely—big city bus stations/for a meal, $5 or $10/a kind word.)

Child Prostitution—(pornography by-product/30,000 boys, 60,000 girls.)

Foster Parents Sell/Rent—(Rockford, Illinois, social worker jailed for allowing his 3 foster sons to perform sex acts before a camera for $150 each.)

Kid Drug Addicts.

Parent Drug Addicts.

Children of Prostitutes.

Let me conclude by drawing special attentions to the energetic work of Dr. Judianne Densen-Gerber, president, Odyssey Institute of New York, in focusing nationwide attention on this problem.

Finally, the people of the United States are repulsed by child pornography and letters to the editor and editorials—and I have included those from the Sun Times and the Chicago Daily News—are immediate measurements of this uniform concern.

I would welcome specific questions at this time.

Mr. Conyers. I want to thank you very much, and point out that the Attorney General's representatives in the Department of Justice will be testifying subsequently, and we are in the process of correlating the State laws on the subject, so that we can, in fact, determine whether there is a need for additional Federal legislation as opposed to perhaps enforcement problems.

Mr. Osanka. I have provided the Illinois proposed statute in the attachments. [See p. 21 for attachment I.]

Mr. Conyers. We appreciate that.

The problem, it seems, that the subcommittee is initially confronted with is whether or not, and I think this is the threshold question, Federal legislation is needed.

Would you be satisfied, Professor Osanka, and we appreciate your work in the area, if we were to determine that there could be an improvement in law enforcement of the existing State and Federal legislation so that there might not be a need for additional Federal legislation?

Mr. Osanka. Representative Conyers, I will not be satisfied until failsafe safeguards are provided for children from this kind of abuse. Our judicial system is such that children who are molested, children who are victims of intrafamily sexual abuse, incest, very seldom receive justice or protection. The judicial system is inadequate to their needs.

I would suggest that you are referring to those very same existing laws, and they were ineffectual in cases of sexual molestation of children, both strangers and persons known to the children, so I will assume they will be as ineffectual in cases of the sexual abuse of children through pornography.

Mr. Conyers. If we pass another Federal law, and it becomes ineffectual in prosecuting the same cases, that wouldn't make us any better off, would it?

Mr. Osanka. If your Federal law included provisions for punishment for the producers and the sellers, I think that would stop the child abuse through sexual molestation and pornography primarily because it would stop the marketability of the materials. If it included even the bookstore manager, that person who sits up in the high booth in the adult bookstores, and requires the 50 cents of everybody who comes in, a couple might test it, but if it is successfully prosecuted, there will be no volunteers for that kind of work, and it will stop the flow of dollars to pornographers, and in my view take them out of the child pornography business. My goal would be to insure, and I think that would, that they not further molest children. There is no justice for children at the present time in this category, and there is very little justice in the categories of other sexual molestation.

Mr. Conyers. Finally, do you see some problem in the nature of our societal involvement in which children are growing up, which has to do with this increased activity?

That is to say, that the Shirley Temple of yesterday has become the Jody Foster of today, so there is a widespread increase in teenage sexual promiscuity.

It is being filmed very explicitly. It is on television quite a bit. Part of it seems to be the nature of our society, so I am raising the question that ultimately has to be considered, which is, will a law against the distributors, the porno shopowners, the moviemakers and ultimately down to the second and third people in the distribution chain have any serious effect on stemming what seems to be a sociological phenomena?

Mr. Osanka. I would reinforce your feeling by pointing out in 1976 it was reported at the American Academy of Pediatricians in Chicago that in the previous year, 1975, 800 girls 11 and below gave birth to children in Cook County. So yes, the sexual experimentation of teenagers and even preteens is certainly on the rise. I think in those cases, particularly 11-year-olds, that it was a clear case of neglect of parents or guardians. I think we cannot lose sight of the fact, and we have a tendency to do it because I think frankly we want to avoid thinking about it, that such literature is depicting preteen children. I don't think we can lose sight of the fact that even if we find a progressive teenage girl that so much of the material depicts sadomasochism themes, and I don't think that we can neglect the fact that this kind of interruption in the natural sexual education of a child can have devastating effects on the personality and the way that child relates to society.

Mr. Conyers. Thank you. I yield to the gentlewoman from New York, Ms. Holtzman.

Ms. Holtzman. Thank you, Mr. Chairman.

I thank the witness for his testimony. I personally find the problems of abusing and especially sexually abusing young children to be repugnant, and I think most Americans do.

I would like to get a sense of the scope of this problem. I would like to know if you have any figures to indicate how many publications include the actual use of youngsters in sexual activities, what the circulation of these publications is, what the economic value is, what profits have been made, how many children have been used, and the like. Do you have any statistical information that can give us a clearer perception of the extent of the problem?

Mr. **Osanka**. Perhaps the most in-depth open investigation of the problem which illustrates answers to your question is in the Chicago Tribune series. There is also nonpublic information through various law enforcement agencies, some of which is undercover work.

I will, in my response, combine what I know from both sources, plus some other methods of research that I use.

It is a hazy closed area, so it is difficult to get adequate data, but it looks like 11 percent of the pornography trade uses examples of the use of children in pornography. It seems to be in the neighborhood of several million dollars' profit now. The materials are widespread, and I have heard of reports of the materials being in Canada, Australia, as well as the United States.

The numbers of children involved is difficult to measure because we are only now beginning to rescue some of the children who are involved and place them under protective custody and in most cases under psychiatric treatment.

Indications in Chicago, and I think these will be becoming public in the Chicago accounts as the Chicago Police Department releases them, indicate that there is a great deal of interstate traffic in child prostitutes, primarily male prostitutes, and many of the male prostitutes, some prepubescents, some teenagers, are also involved in cottage industry-level photographing of their sexual activities.

Maybe your other witnesses will have some more precise information. I don't think I feel secure in saying anything except that mine are qualified statements based on very indirect measurements.

Did I answer all of your question?

Ms. **Holtzman**. Your answer gave me some idea of the scope of the problem, although it would be helpful, I think, to have more exact figures.

You also mentioned that the problem seemed to have escalated in the last few years. Do you know what the reasons for that are?

Mr. **Osanka**. What I think occurred is that there was an introduction of foreign materials in order to test the market.

Ms. **Holtzman**. Where do these materials come from?

Mr. **Osanka**. The themes, the victims, are usually Asian or European.

Ms. **Holtzman**. Do you know the country of origin?

Mr. **Osanka**. I do not. The materials of those using Asians, seem to be a Far Eastern country. I want to be careful, because I am a scholar on Thailand, and I am sensitive to casting any unwarranted negative image on any of those Eastern countries.

I think what happened is that these materials were brought in by nonorganized distributors of pornography, but they picked up interest so much and they sold so well that the American pornographers began getting into the business.

There is also something that occurred, I believe, simultaneously, and that is within pornography, particularly films, there is not much else they can depict except children. In the Chicago bookstores alongside of the films of depicting children in sexual activity with each other and adults, there are films—and each of these canisters have a still photograph on the outside—films illustrating men defecating into the other man's mouth, films illustrating German shepherd dogs having sexual intercourse with women, films with women utilizing eels in their body; all, of course, carries sadomasochistic themes.

There really isn't very much else that can be done within this field other than what is suspected that has been done, but nobody I know has found proof, and that is to perform actual torture and murder in the films.

So the market seems to have needed a new direction, and it has found it with the use of pubescent children in pornography.

Mr. Conyers. The gentleman from North Carolina, Mr. Gudger.

Mr. Gudger. Mr. Osanka, you are not a lawyer?

Mr. Osanka. I am not.

Mr. Gudger. Do you know what laws, if any, the State of Illinois, and I believe this is where your studies have originated, what laws, if any, the State of Illinois has protecting minors from the acts of adults who would contribute to their delinquency?

Most States have substantial criminal sanctions against the acts of adults contributing to the delinquency of a minor. Do you know what prevails in the State of Illinois by way of protection in this area?

Mr. Osanka. I have some idea, sir. They are not uniform codes that apply to all States, but most States, and yours included, are against the sexual exploitation of children, impairing the morals of minors and taking indecent liberties with a minor.

Mr. Gudger. We go further in my State. Any conduct which contributes to the delinquency of a minor by diverting that minor's life into a pattern of abnormality or criminal conduct would be punishable as misdemeanor up to 2 years, and I thought Illinois had similar sanctions.

Mr. Osanka. Illinois does.

Mr. Gudger. What is being done in Illinois by way of punishing those who engage in this conduct by way of a State criminal prosecution?

Mr. Osanka. I think we have to be very careful, Congressman, in that we don't take comfort in the existence of statutes that are on the books in connection with the use of children in pornography, primarily because they provide for catching the adults in the act or having a witness to the act who is willing to testify. When the pornographers stage these shows, when they take their pictures; they do not invite the police; they do not invite the press. There are usually no witnesses to these acts of producing pornography.

Mr. Gudger. Mr. Osanka, the first portion of this statute which we are considering and to which your remarks are addressed would make it a criminal offense, a particular criminal offense, for any individual to cause or knowingly permit a child to engage in a prohibited sexual act or the simulation of such an act for the purpose of having it photographed. Now it would appear to me that the State statutes which provide for criminal punishment of those who contribute to the delinquency of a minor would be involved at the State level in this particular class of offense and the problem of proving what is charged here would be exactly the same as proving that act of contributing to delinquency which I have referred to. What I am trying to do is define in my own mind the need for this legislation prohibiting the photographing, as distinguished from the need for legislation prohibiting the transporting.

Now transporting in interstate commerce, if those goods are of a criminal nature may be a Federal crime. But the photographing of someone is ordinarily subject to State enforcement and not Federal enforcement. So I am looking at a statute here which proposes to make it a crime to photograph which could or could not be criminal depending on the State law ordinarily, and it is parallel with the statute which makes transporting of obscene materials which might have the ultimate social effect of causing contribution to delinquency in violation of State law.

I have no trouble with the idea of making a crime of this act of transporting this obscene material, because it could contribute to the delinquency of a minor in violation of State law. I am not having trouble with that part of the statute. But I am having trouble understanding why this should be a Federal crime as opposed to a State crime, the actual photographing. Do you follow me?

Mr. **Osanka**. Yes, sir, I think I do. I should preface by remarks again by saying I am not an attorney. However, I think the same problem prevails for the same reason that the Chicago Police Department had to revert to undercover tactics, and that they were able to last week, almost two weeks ago, now, experience the only recorded bust of pornography film being enacted. They caught them actually in the act, but because it is so quick to do this kind of thing and so easy to dismantle afterward and difficult to find willing witnesses to provide proof that the picture was taken. One could say, yes, it was done because there is a photograph of it. I would think that that bill has the possibility of endangering the lives of the children involved; if they are strange children and the offender fears detection, he may eliminate the child as the only witness, and many of these cases are examples of one-time use of children.

I would urge you to consider that as a possibility, and the other thing is that there are so many cottage industry efforts in photographing children. There have been a number of cases, and I did want to draw back one moment, my study of the use of children in pornography has been nationwide, not simply Illinois. And it is now beginning to be cross-cultural. But the problem is a number of times men will entice children, take their picture, and then disappear, and the child has no way of identifying the person.

The only way, it seems to me, that sexual abuse of children can be stopped is to stop the profitmaking by prosecuting a photographer.

Mr. **Gudger**. Mr. Osanka, I have two other questions. One of them is, you have addressed this question and this problem of the interstate transportation of children for prosecution. Would not that be a violation of the Mann Act?

Mr. **Osanka**. Not under current interpretation I don't believe, because the Mann Act applies specifically to female children.

Mr. **Gudger**. All right; are you proposing an amendment to that act? It is not in the bill which you are addressing.

Mr. OSANKA. No, my remarks are addressed principally to the use of children in pornography as a form of child abuse and neglect. I did not today address myself to the Mann Act.

Mr. GUDGER. Would you support an amendment to the Mann Act which would make the transportation of infant children for such purposes a violation of that act and not limited as it is now limited, as you suggest, to the transportation of women for this purpose?

Mr. OSANKA. I believe a great many children will be saved a great deal of hardship if the Mann Act was so amended to include male children.

Mr. GUDGER. Of course you are not addressing that problem here, nor are you advancing any such legislation, but an entirely different form of bill is what you are proposing?

Mr. OSANKA. That was not what I was asked to do here.

Mr. GUDGER. I see.

May I ask you one specific question. On page 3 of your manuscript, you say,

> While I personally favor clinical treatment of individual child sexual molesters, I urge the provision of strong penalties for American photographers convicted of using children in pornography.

Do I understand you do not favor criminal punishment of those who are actors in the molesting of children? You say you recommend clinical treatment. Don't you recommend criminal treatment?

Mr. OSANKA. Let me correct the record. I am saying commercial, not photographers, but pornographers there, and I make a distinction. Yes, I do favor criminal punishment of sexual molesters of children, but I think that the sentencing of those individuals ought to be toward therapeutic treatment rather than simply temporarily placing them in prison and not addressing ourselves to their psychiatric problem. I think the system in California, Santa Clara County, is a good example of that which the Nation should emulate. That is, they take convicted molesters of children, in this case primarily intrafamily molestation, and in addition to penalty, imprisonment, they require they undergo this therapeutic treatment.

All we are doing otherwise is holding them temporarily. We are not dealing with their particular problem.

Second, in many cases the sexual molesters of children are not the typical criminal-minded or criminal-bent person. It is a sad commentary but a realistic one not only in our society but other societies that many of the sexual molesters of children are white, middle class, well-established men. They go to church; they are often pillars of their community; they seem to be concerned about matters of their community; they vote regularly; they earn good incomes; they have this one particular problem and to place them totally in prison and not treat their problem probably contributes to a wider social disintegration in that it probably leads to divorce; it probably leads to mothers going on welfare; and it probably leads to the children going into the foster and the institutional care, when, as a matter of fact, it is a social problem rather than a criminal problem.

I think because we don't have that, our shortstop has to be the severe criminal penalties.

Mr. GUDGER. Mr. Osanka, as I understand it, you are proposing serious criminal sanctions against those who photograph a nonheterosexual act involving a child, or heterosexual act involving an infant, and yet do I understand you to say that you do not propose serious criminal sanctions against the person who performs this sort of act with a child, thereby leading that child into a life of distorted nonheterosexual attitudes?

Mr. **Osanka.** I am not saying that. Let me see if I can make myself clear. I am saying I do accept the existing provisions for convicted persons of those acts. I do, though, think that the acts are such that unlike other forms of criminal activity, these individuals can be rehabilitated. I also think it is critical that they be rehabilitated because we are simply delaying the problem by placing them in prison and not providing psychiatric treatment.

But my target in the other efforts is the businessmen involved, the people who are making profit from this activity, and, worst of all, are providing our communities with literature that is suggestive to men and women who are susceptible to that kind of direction. The book, "Child Discipline," to an uneducated person could be interpreted as a primer, a guidebook. The first page is a scientific description of the need for discipline. Obviously that is to meet the Miller requirement that it has some scientific value. The rest of it is all downhill.

I think this kind of material is extremely dangerous to those in our communities who are susceptible to these kinds of suggestions.

Mr. **Gudger.** One final question, Mr. Chairman.

Don't you agree that any conduct on the part of an adult, commercializing the abhorrent sexual activity involving a child or contributing to that child's own distorted vision of what is the heterosexual function, don't you feel that all of that conduct is abhorrent to society and requires social sanctions, criminal sanctions?

Mr. **Osanka.** I do, with the provision as I have stated it.

Mr. **Conyers.** Thank you.

The gentleman from Pennsylvania, Mr. Ertel.

Mr. **Ertel.** Thank you, Mr. Chairman.

Mr. Osanka, I appreciate your comments and your views on this particular matter. I personally tried child pornography cases as a prosecutor, and I am aware of lack of definition in the statutes, specifically State statutes, so I happen to agree with you at least in one State there is a lack of definition which should be clarified.

Bu I am concerned about a couple of things you talked about. You said that you wanted to prosecute the bookstore manager who has this material in his possession. I wonder, is that knowing possession, or unknowing possession you would prosecute him for?

Mr. **Osanka.** I have been visiting in a lot of adult bookstores in the last 6 months, and I would be very surprised if any of them wouldn't know of the material they have there.

Mr. **Ertel.** That is one of my problems; we have a real problem defining what is pornography and what is free speech in this country, and if the man doesn't know that in fact there is child pornography within something he might have, do you think he can constitutionally be prosecuted?

Mr. Osanka. I think you are looking at the problem from the point of view of obscenity in the first amendment, and I urge that the problem be looked at from the point of view of the definitions of child abuse and neglect, and so the individuals involved are either the production, the distribution, or the selling of the material would be my definition of party to child abuse and neglect.

I think also as soon as they are apprised of the fact that they would be a party to it and they could still without any kind of harrassment sell the other kind of material, they would object to selling child pornography. I am looking not for successful court cases; I am looking for immediate protection of children.

Mr. Ertel. I am not here trying to defend bookstore managers. I am not wild about the class selling pornography, but I am protective of those selling legitimate things covered by free speech. It seems to me you are going overboard.

A bookstore manager, if he has something in a book of which he doesn't know—and, quite frankly, this bill hits him, and I have introduced one similar in content, but more limited—if you prosecute him, and he does not have the knowledge of the content of a book; he has not contributed to that child's delinquency, but if you are after the one taking the photograph, he has directly contributed to the child abuse.

I think maybe we have overkill here by going against the bookstore manager. The man who does the photographing and participates, he is the one creating the abuse. Sure, the bookstore seller is creating a market, but if we are going to go after the market, we have to go after the person who purchases as well, because he creates the market by buying. I think your argument runs a little far, and I wonder if you would comment on that?

Mr. Osanka. Thank you. I appreciate your concerns about that. I expect that the bookstore manager will arrange to cop a plea and be able to provide that additional information particularly if he is facing some severe penalties himself. But I think we cannot lose sight of the fact that we are talking about the sexual abuse in many cases of preteen children. The sexual abuse takes place clandestinely. There are very few opportunities, unless the law enforcement agencies have full-time undercover people to do nothing but seek out evidence in these cases, and it seems to me that we could define even the selling of the use of children in pornography as a clear indication of child abuse and neglect.

I submit to you gentlemen that it is a clear case of child abuse and neglect in that the act of selling that material is guaranteeing that there be additional abuse of children. It is also rewarding the seller for an act which as a society there are strong sanctions against, and we do not approve. We have accepted adult pornography. We have accepted it on the basis that we assume they are consenting adults and not minors and not prepubescent children, and they have the right to do as they please with their bodies, time, and mind. We are dealing now in the cases of children in pornography, with children who do not have the right of refusal. It is a total exploitation with the exception of perhaps some streetwise boys 14 to 18 and some streetwise girls. I think the question becomes academic if it is going to be placed in the regular provisions of obscenity and first amendment.

Mr. Ertel. I am afraid you are going to run into constitutional prohibitions and certainly you don't want us to legislate something that is unconstitutional. I think we have an obligation to provide legislation which conforms, if possible, with the Constitution. But let me turn to another area, if I might for a moment. I notice in your statement although the bill does have a provision to prosecute one who permits these acts, would you also recommend strong sanctions against the parents or pornographer who wasn't a photographer, but who, in fact, encourages or allows a child to participate?

For instance, in one case I was involved in, it was a mother who had her child photographed. Would you prosecute her as well?

Mr. Osanka. I think their act would clearly fall under the category of neglect, child abuse and/or neglect. When I say "and/or neglect," the parent or guardian involved should be prosecuted for neglect.

I say that because I realize having come through the child care system and being dependent on foster families and institutional care, and after examining the nature of the children, many of whom are involved in this activity, that very often they are dependent children and a foster care or guardian takes care of them. Sometimes it is the natural parent.

It seems to me no question that the children are neglected. If we have 800 or so 11-year-old girls giving birth to children, obviously there is neglect. Obviously the misuse of children leads to pornography as well.

Mr. Ertel. If it is "knowingly neglected," would you draw a distinction when you say neglect? I think you are going further. A child could do something like this without the parent's knowledge. Would you prosecute the parents under those circumstances?

You are talking about children up to the age of 16, according to the bill. I question now how far you intend to go. It seems to me that you are aimed at the problem. I think you have your eye on the right thing, but I wonder if you are not being overbroad?

Mr. Osanka. I think I would trust the jury to decide the level and intent of the parent involved.

Mr. Ertel. You want intent and "knowingly"?

Mr. Osanka. Yes, sir.

Mr. Ertel. I guess with the bookstore owner that doesn't matter.

Mr. Osanka. I think there are two different categories. We have a case of parental responsibility which is a far more serious responsibility than selling literature It is the responsibility to insure that the child has safety, both mental safety and physical safety. So I think it is a much larger problem.

There are cases, if we are prepared to look closely, of children under two coming into county hospitals with gonorrhea of the throat. It is clear that there has been neglect on the part of guardians. In these cases, because the child cannot be qualified very often as a witness, and for other reasons, there are no witnesses and nobody can be tried for the actual offense.

But it seems to me that a parent can be questioned in terms of neglect. A parent must have been neglecting a child that is able to contract gonorrhea of the throat.

Mr. ERTEL. Under 2255, it says, "any individual who receives"—that is section 2, and in the previous sections it says, "knowingly transports." Would you want "knowingly receives material" as well?

Mr. OSANKA. I would have to study the complete statement. My gut reaction is that if there were strong penalties, the people involved up and down the line would insure that they were not involved, particularly if they could continue the way they were continuing before, being able to sell such things as individuals defecating on each other and the like. Nobody ever complained about that.

Mr. ERTEL. Thank you.

Mr. CONYERS. Thank you.

The gentleman from Ohio, Mr. Ashbrook.

Mr. ASHBROOK. I was unfortunately delayed so I did not hear the entire testimony. I did scan your testimony and I noticed, in the footnote to No. 5, something I would like to have a comment on.

You are referring to the "Chester the Molester" series. You say,

> Given the nature of the "molester" series, I find Larry Flynt's public remarks concerning his alleged disapproval of child pornography to lack credibility. Further, I question the advisability of the National Committee for the Prevention of Child Abuse—Chicago to purchasing child abuse prevention ads in Hustler Magazine.

Could you give me some more information on the ads and that particular statement?

Mr. OSANKA. What I referred to was the regular monthly installment called "Chester the Molester." These are two examples. I showed and described these before. They carry a clear message of a number of things, one, the legitimacy of children as sex objects. I think they carry a message, too, that parents who are concerned about the safety of their children are concerned without reason.

Also, in Hustler magazine is an ad, a legitimate ad, regarding the need for heightening public awareness about child abuse. It is an ad placed by the National Committee for the Prevention of Child Abuse—Chicago in cooperation with the Ad Council. I believe that the National Center on Child Abuse and Neglect, DHEW, provides support to the national committee. The ad is placed in "Blue Book" and every other kind of a magazine.

I question the advisability of the placement of the ad in Hustler in connection with "Chester the Molester," but more importantly because I informally tested it with 80 students. They had the ad and all the other material. We discussed all the material and when it came to the ad, they did not interpret it as an ad but they interpreted it as a pun and as a put-on.

I don't imagine—but I could be very wrong—there are very many people who read Hustler and find "Chester the Molester" humorous that are going to be responding to an ad of that nature. I think the ad could be coded to see what kind of responses came through.

Mr. ASHBROOK. Is that a one panel or a series of panels?

Mr. OSANKA. The ad I am referring to is here.

Mr. ASHBROOK. The "Chester" series—is that one one picture a month or is it a series or panel like a comic strip?

Mr. OSANKA. One per month. We described the theme before and rather than repeat it, I will provide it. You have copies for the record along with my statement.

Mr. **Ashbrook.** Do you know of any other ads or expenditures of money, which I guess would be taxpayer's money, by the National Committee for Prevention of Child Abuse that would go into the economic mainstream or magazines of that type?

Mr. **Osanka.** I do not know if Hustler Magazine is classified as pornography but I do know that this ad exists.

Mr. **Ashbrook.** Do you know, in fact, that it is paid for, or is Larry Flynt running it as a public service?

Mr. **Osanka.** Would you rephrase the question, please?

Mr. **Ashbrook.** Do you know, in fact, if the ad placed in Hustler is being paid for? Is it possible that Mr. Flynt is running it as a public service?

Mr. **Osanka.** The attorney for the National Committee on Child Abuse told me it is being paid for, paid for in all the publications that are using it.

Mr. **Ashbrook.** Thank you. That is all the questions I have.

Mr. **Conyers.** Thank you, Professor Osanka. Your testimony has been very helpful. We will incorporate all the additional materials that you have submitted here. We would hope that you will stay in touch with us as we try to develop this on the Federal point of view to a state which it has not reached before. We appreciate your being our leadoff witness.

Mr. **Osanka.** I am at your disposal at any time.

Mr. **Conyers.** Thank you.

[The prepared statement of Mr. Osanka follows:]

STATEMENT BY FRANK OSANKA, ASSOCIATE PROFESSOR OF SOCIAL JUSTICE AND SOCIOLOGY, LEWIS UNIVERSITY, GLEN ELLYN, ILL.

INTRODUCTION

The act and the depiction of the act of children in explicit sexual interaction is a clear case of child abuse and/or child neglect. Existing child abuse and neglect statutes should be strengthened to provide strong criminal penalties for all adult participants, from the cameraperson to the "adult" bookstore clerk. The law should be so specific that even the act of selling such pornography be interpreted as a party to child abuse and neglect. I realize that these are extreme measures, but the socially corrupting nature of child pornography and the current inability of the criminal justice system to stop it, demand strong protective legislation. In my view, a person who purchases child pornography is a party to child abuse since his purchase will insure a profit for the pornographer and thereby guarantee abuse of additional children through the production of new items. The purchase is also a reward to the pornographer for the child abuse he has already commissioned.

The incidences of child sexual abuse is on the rise in the United States and this form of social deviance will be made worse by the introduction and widespread distribution of various forms of pornography utilizing children as the principal sex object. Such materials, in my view, represent a socially-disintegrating assault upon basic moral principals of American society. More immediate, child pornography is a clear case of child abuse and neglect with the potential for immediate and long-term damage to the children, and perhaps the adult readers, involved.

As a concerned citizen, a responsible scholar, and a startled father of four, I urge the Congress of the United States to take immediate remedial action to provide adequate legal provisions guaranteed to secure maximum protection for American children from this insidious commercial exploitation of children's vulnerabilities, which, at the same time, clearly is child abuse and/or neglect. I urge the designer of such legislation to go to great length to insure that the sexual use of children in pornography be viewed as child abuse and/or neglect. H.R. 3913 ("Child Abuse Prevention Act"), which is now under consideration by the U.S. Congres, seems so directed.

Legislation must take care to word protective laws regarding the sexual abuse of children in pornography with such precision that time-consuming, and often futile, debates on the prevailing definitions of obscenity and pornography be avoided.[1] Such debates do not provide protection for the victimized and often traumatized child. The sexual abuse of children in pornography is demonstratably child abuse and neglect and/or is a clear danger to the dependent children involved and to tthe basic moral fiber of the American society. Children in American society are conditioned to obey adults and very young children operationally do not have the right of refusal. Persons who coerce children into pornographic activities are violating the civil rights of these children. The sexual abuse of children for commercial pornographic purposes is not guaranteed by the first amendment. Some may debate the degree of obscenity that is involved in the sexual exploitation of children, but none can deny that such insidious manipulations are clearly child abuse and/or neglect.

Offenders under this definition must be vigorously pursued and severely punished. While I personally favor clinical treatment of individual child sexual molesters, I urge the provision of strong penalties for American pornographers convicted of using children in pornography. Further, serious penalties should be provided for the importation and exploitation of child pornography. In brief, protective legislation in this area must take the profit out of child pornography. It is not social or cultural need, but individual greed that has given birth to the wholesale introduction of child pornography. In my view, Ellen Goodman's words reflect the majority opinion of Americans when she says "This is not a first amendment issue. It is not a matter of legislating the sexual fantasies of adults. It's a matter of protecting the lives of the young models." (Chicago Sun-Times, Mar. 15, 1977. p. 32.)

I suspect that child pornographers hope that the judicial justice system gets bogged down in lengthy debate over the first amendment and obscenity definitions thereby postponing (perhaps for years), meaningful action against child pornography. The result, of course, will be an avalanche of depictions of the sexual abuse of children.

With all due respect to men and women legislators, I would urge you to avoid the very understandable inclination to decline from a personal examination of representative samples of child pornography. It is a painful, sickening, and often very sad experience, but you are obligated to be satisfied in your own mind that none of this material realistically contains any cultural or scientific value. Through such an examination, you will fully appreciate the challenging psychological and social implication of most examples of child pornography.

On February 4, 1977, Dr. Judianne Densen-Gerber and I held a closed press conference in the Executive House in Chicago (Attachment II). The assembled newspersons, many of them hardened veterans of the "crime beat," reacted emotionally by expressing shock and verbalizing anger. Indeed, a tape recording of the press conference indicates that one Chicago Sun-Times columnist and popular "talk show" hostess said, "I'd like to just say that it is the worst thing I have ever seen in my entire life and I wish they (child pornographers) were all dead."

After the press conference, many of the assembled newspersons expressed their concerns in their respective media and some became active crusaders for public awareness and public demand for protective legislation against the sexual molestation of children. For example, the people in the Chicagoland area owe a debt of gratitude to Roger Simon of the Chicago Sun-Times (Attachment III), Mike Kline of the Chicago Sun-Times (Attachment IV), Bob Wiedrich of the Chicago Tribune (Attachment V), and the Chicago Tribune's child pornography/prostitution investigative team made up of George Bliss, Michael Sneed and Ray Moseley (Attachment VI).

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[1] H.B. 286 recently passed by the Illinois General Assembly is already showing the potential for endless debate (Attachment I).

Responsible citizens have learned of child pornography and have demonstrated their disapproval through press conferences/TV/radio[2] and by physically demonstrating outside or "adult bookstores" that sell child pornography. The press has investigated and responsibly reported this new form of social degeneratness. The elected legislation must act now! In my view, local,[3] state, and federal legislators must now take the ball and run toward the goal of adequate protection for children from sexual exploitation and provide strong criminal penalties for all guilty of this new form of child abuse.

NATURE OF CHILD PORNOGRAPHY IN AMERICA

I began researching sexual abuse of children last year in seeking data for my special 3-credit hour course at Lewis University (Glen Ellyn Ill.) entitled "Child Abuse and Neglect Prevention and Treatment." Scholarly research into the sexual abuse of children usually takes into consideration intra-family sexual abuse (incest), molestation by strangers, and child prostitution. However, in the last two years, there has been a massive introduction of pornographic materials depicting children in explicit sexual acts with each other and with adults. Such materials constitute a fourth, and heretofore unsuspected, type of sexual abuse of children. Many of my social justice students are active law enforcement officials and they began to bring confiscated examples of child pornography to class. My research and their samples so startled me that I initiated my own public awareness campaign through radio and television "talk shows" and through cooperation with the newspapers and law enforcement agencies (Attachment VII). More shocking than even the crass nature of the child pornography itself was the discovery that there is a total lack of protective laws or that the existing laws are so vague that meaningful prosecution is not possible.

My aim was and is to heighten public awareness, mobilize public disapproval against the child pornographer, and to urge voters to demand the enactment of protective legislation.

Let's be clear what we are talking about. I am referring to books, pamphlets, playing cards, and 8mm films which vividly depict children in sexual poses and/or in explicit sexual acts with each other or with adults. Much of the materials have clear themes of sado-masochism. The pamphlet "Child Discipline" is a prime example of this theme. "Child Discipline" advocated adult sexual satisfaction through the spanking of children. It provides both written and pictorial depictions of adults spanking children.

ATTACHMENTS

Attachment I: House Bill 286, Illinois General Assembly and news clips about the same.

Attachment II: Closed Press Conference and Anti-child Pornography Protesters in Chicago, February 1977, news clips. (Retained in committee files.)

Attachment III: Roger Simons Chicago Sun-Times articles on sexual abuse of children. (Retained in committee files.)

Attachment IV: Mike Kline's Chicago Sun-Times articles on sexual abuse of children. (Retained in committee files.)

Attachment V: Bob Wiedrich's Chicago Tribune articles on sexual abuse of teenage runaways. (Retained in committee files.)

Attachment VI: Chicago Tribune's child pornography/prostitution series written by George Bliss, Michael Sneed, and Ray Mosley. (Retained in committee files.)

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[2] Please see Attachment VII for a list of radio/TV who cooperated in public awareness in Chicago. Special credit should go to Steve Edwards and his "AM Chicago" (WLS-TV-ABC). "AM Chicago" featured Dr. Judianne Densen-Gerber twice, members of the Rape Study Committee, Illinois General Assembly; Representative Ronald Sterney; Chicago Tribune's Michael Sneed and George Bliss and Frank Osanka and "Sheilla" a sexual abuse victim, and the chairman of the Illinois General Assembly Subcommittee on Obscenity.

[3] Both acting Mayor Michael Bilandic and Alterman Edward M. Burke (14-Ward) have drafted protective city ordinances. The Chicago Administration this month closed down the 34 adult book stores through strict enforcement of existing building codes (Attachment IX).

Attachment VII: Methods used by Frank Osanka to create public awareness, public concern, and public action regarding the sexual abuse of children.

Attachment VIII: Ads for children in pornography. (Retained in committee files.)

Attachment IX: Drafts of protective city ordinances authored by Acting Mayor Michael Bilandic and Alderman Edward M. Burke (14th Ward) of Chicago.

Attachment X: Samples of "Chester The Molester" monthly series from Hustler Magazine. (Retained in committee files.)

Attachment XI: Child Victims: "The Boys Who Sell Their Bodies." (Retained in committee files.)

Attachment XII: Dr. Judianne Densen-Gerber, National Leader Against the Use of Children in Pornography—"Kids in Porn: How Big Is the Threat?" (Retained in committee files.)

Attachment XIII: Chicago Opinion: Letters to the editor and editorials, Chicago Tribune and Chicago Sun-Times.

ATTACHMENT I

HOUSE BILL 286 (ILLINOIS), AND NEWS CLIPS ABOUT THE SAME

80th General Assembly, State of Illinois—1977 and 1978

Introduced February 10, 1977, by Stearney, McAuliffe, Jane Barnes, Friedland, Geo-Karis, Boucek, Huff, Hudson, Lucco, Abramson, Anderson, Antonovych, Bartulis, Beatty, Brady, Brandt, Caldwell, Campbell, Capparelli, Collins, Conti, Cunningham, Daniels, Dawson, Deavers, DiPrima, Domico, Doyle, Ebbesen, Farley, Friedrich, Gaines, Giglio, Hoffman, Dan Houlihan, Emil Jones, Dave Jones, Keats, Kempiners, Kozubowski, Kucharski, Leinenweber, Luft, Matejek, Mautino, McLendon, McMaster, Meyer, Molly, Mudd, Mulcahey, Nardulli, Neff, Polk, Porter, Pouncey, Rigney, Ryan, Schoeberlein, Schuneman, Sharp, Simms, Skinner, Stanley, E. G. Steele, Taylor, Terzich, Tipsword, Totten, Tuerk, Van Duyne, Winchester, Wolf, Lechowicz.

Synopsis: Amends the Criminal Code of 1961 and the Unified Code of Corrections to create and specify the penalty for the offense of obscenity involving a minor and to provide that persons convicted of that offense may not be sentenced to probation, periodic imprisonment or conditional discharge. Effective immediately.

AN ACT in relation to obscenity involving a minor, amending certain Acts herein named

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 11-20a is added to the "Criminal Code of 1961", approved July 28, 1961, as amended, the added Section to read as follows:

(Ch. 38, new par. 11-20a)

Sec. 11-20a. Obscenity Involving a Minor. (a) Elements of the Offense.

A person commits obscenity involving a minor when:

(1) with knowledge of the nature or content thereof, or recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof, he:

(A) Sells, delivers or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or

(B) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or

(C) Publishes, exhibits or otherwise makes available anything obscene; or

(D) Performs an obscene act or otherwise presents an obscene exhibition of his body for gain; or

(E) Creates, buys, procures or possesses obscene matter or material with intent to disseminate it in violation of this Section, or of the penal laws or regulations of any other jurisdiction; or

(F) Advertises or otherwise promotes the sale of material represented or held out by him to be obscene, whether or not it is obscene; and

(2) the matter or performance alleged obscene has as one of the participants or portrayed observers a minor who is pre-pubescent or made to appear as such.

(b) Definitions.

(1) Matter, in whatever form, and a performance whether live, cinematic or over broadcast media, of whatever nature, is "obscene" for purposes of this section if:

(A) it contains depictions or descriptions of sexual conduct which are patently offensive; and

(B) taken as a whole, the average person, applying contemporary standards of the State, would find it has as its dominant theme an appeal to prurient interest; and

(C) taken as a whole, it lacks serious literary, artistic, educational, political or scientific purpose or value.

(2) "Sexual conduct" includes any of the following:

(A) sexual intercourse, which for purposes of this Section includes any intercourse which is normal or perverted, actual or simulated;

(B) deviate sexual conduct as defined in Section 11-2 of this Act;

(C) acts of masturbation;

(D) acts of sadomasochistic abuse, which includes but is not limited to (1) flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature or (2) the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed;

(E) acts of excretion in a sexual context; or

(F) exhibition of post-pubertal human genitals or pubic areas.

The above types of post conduct in subsections (b)(2) (A) through (F) are intended to include situations where, when appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans or animals in an act of apparent sexual stimulation or gratification. A thing is obscene even though the obscenity is latent, as in the case of undeveloped photographs.

(c) Interpretation of Evidence.

Obscenity shall be judged with reference to ordinary adults, except that it shall be judged with reference to children or other specially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience.

Where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that material is being commercially exploited for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter is without serious literary, artistic, educational, political, or scientific purpose or value.

In any prosecution for an offense under this Section evidence shall be admissible to show:

(1) The character of the audience for which the material was designed or to which it was directed;

(2) What the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;

(3) The artistic, literary, scientific, educational or other merits of the material, or absence thereof;

(4) The degree, if any, of public acceptance of the material in this State;

(5) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material;

(6) Purpose of the author, creator, publisher or disseminator.

(d) Sentence.

Obscenity involving a minor is a Class 4 felony. A second or subsequent offense is a Class 3 felony.

(e) Prima Facie evidence.

The creation, purchase, procurement or possession of a mold, engraved plate or other embodiment of obscenity specially adapted for reproducing multiple *copies, or the possession of more than 3 copies of obscene material shall be prima facie evidence of an intent to disseminate.*

(f) Affirmative Defenses.

It shall be an affirmative defense to obscenity that the dissemination was to institutions or individuals having scientific or other special justification for possession of such material.

Section 2. Section 5-5-3 of the "Unified Code of Corrections", approved July 26, 1972, as amended, is amended to read as follows:

(Ch. 38, par. 1005-5-3)

Sec. 5-5-3. (Disposition.) (a) Every person convicted of an offense shall be sentenced as provided in this Section, except in cases of murder to which Section 5-8-1A of this Code is applicable.

(b) When a defendant is found guilty of murder the State shall seek a mandatory death sentence under Section 5-8-1A of this Code. If the defendant does not receive a mandatory death sentence as a result of the proceeding and decision under Section 5-8-1A of this Code the trial court shall sentence the defendant under paragraph (d) of this Section.

(c) In any case in which a sentence originally imposed or recommended by a jury is vacated, the case shall be remanded to the trial court. The trial court shall hold a hearing under Section 5-4-1 of the Unified Code of Corrections which may include evidence of the defendant's life, moral character and occupation during the time since the original sentence was passed. The trial court shall then impose sentence upon the defendant. The trial court may impose any sentence which the jury could have imposed or recommended at the original trial subject to Section 5-5-4 of the Unified Code of Corrections.

(d) When a defendant is convicted of a felony or misdemeanor, the court may sentence such defendant to:

(1) a period of probation, a term of periodic imprisonment or conditional discharge except in cases of murder, rape, armed violence, armed robbery, violation of Sections 401(a), 402(a), 405(a) or 407 of the Illinois Controlled Substances Act or violation of Section 9 of the Cannabis Control Act or a violation of *Section 11-20a or* Section 24-1(a) (4), (5), (6), (8), or (10) of The Criminal Code of 1961;

(2) a term of imprisonment;

(3) a fine. However, a fine shall not be the sole disposition in felony cases nor in cases of a violation of Section 24-1(a) (4), (5), (6), (8) or (10) of The Criminal Code of 1961 but may be imposed in such cases only in addition to another disposition under paragraph (d) of this Section.

(e) When a defendant is convicted of a business offense or a petty offense, the court may sentence such defendant to:

(1) a period of conditional discharge;

(2) a fine.

(f) When a corporation or an unincorporated association is convicted of an offense, the court may sentence it to:

(1) a period of conditional discharge;

(2) a fine.

(g) In no case shall an offender be eligible for a disposition of probation or conditional discharge for a Class 1 felony committed while he was serving a term of probation or conditional discharge for a felony.

(h) This Article shall not deprive a court in other proceedings to order a forfeiture of property, to suspend or cancel a license, to remove a person from office, or to impose any other civil penalty.

Section 3. This amendatory Act takes effect upon its becoming a law.

[From Chicago Daily News, Mar. 25, 1977]

ILLINOIS HOUSE OK'S JAIL TERM FOR CHILD PORN

(By Diane Monk)

SPRINGFIELD, Ill.—A prison term would be mandatory for any person convicted of producing, selling or delivering pornography depicting children, under legislation approved by the House.

The vote was 152 to 4 Thursday in favor of a bill sponsored by Rep. Ronald A. Stearney (R-Chicago).

If the bill, which now goes to the Senate, becomes law, it would create the new crime of "obscenity involving a minor." Included under the umbrella of potentially obscene materials would be not only photographs and films, but also live performances and written descriptions of sexual conduct.

The penalty for conviction would be 1 to 3 years in prison and a fine of up to $25,000 for a first offense and 1 to 10 years in prison and a fine of up to $50,000 for subsequent offenses.

An amendment tacked onto Stearney's bill Wednesday in the House expanded the definition of obscenity involving a minor to include pornographic material depicting not only children but also any person who is "pre-pubescent or appears as such."

Illinois hasn't had any obscenity law on the books since last June, when its existing law was struck down as unconstitutional by a panel of federal court judges.

A House subcommitee has been studying the problem of obscenity and is expected to make recommendations about new laws later this year.

Stearney is a member of the subcommittee, but he decided not to wait for it to complete its work before introducing legislation designed to crack down on the widely publicized problem of child pornography.

Stearney assured the House Thursday that he believed his bill to be constitutional, although the measure's few opponents argued that it would violate the right to free speech.

However, the emotional nature of the debate on the bill both in committee and on the House floor made it clear that constitutionality wasn't the issue uppermost in the minds of most lawmakers.

Rep. Thomas W. Ewing (R-Pontiac), one of the 152 who voted for the bill, summed up the attitude of the majority when he declared, "Let's pass the bill and if it's not constitutional, let the court strike it down."

[From Chicago Sun-Times, Mar. 25, 1977]

CHILD-PORNOGRAPHY BAN OK'D IN HOUSE

SPRINGFIELD, Ill.—Legislation designed to curb child pornography sailed through the Illinois House Thursday on a 152-to-4 vote and was sent to the Senate.

The measure, sponsored by Rep. Ronald A. Stearney (R-Chicago), would provide up to three years in prison and up to a $25,000 fine for persons convicted of obscenity involving a minor.

Repeat offenders would be subject to up to 10 years in prison and up to a $50.000 fine.

The bill would cover the production, distribution, advertisement and sale of material depicting youngsters in sexually explicit activity.

[From Chicago Sun-Times, Mar. 30, 1977]

LETTERS

PORNO LAW UNSOUND

Last week the Illinois House voted to define the new crime of obscenity involving a minor (HB 286). Predictions are that the bill will pass the Senate with no difficulty. This is something the Legislature should have done long ago—before pornography purveyors discovered the child porno market. This much is clear.

What is less clear is whether we'll be better off. In the opinion of a noted constitutional attorney whom I consulted, there are several grounds, none of which have anything to do with free speech, on which the courts are likely to throw out the new law. There are serious constitutional defects in the bill as it now stands—defects having to do with the rights of the defendants.

I offered several amendments to try to remedy these defects, but without much success. There are still serious defects. I predict there will never be a sustained conviction for obscenity involving a minor resulting from the passage of HB

286. It is a waste of time at best and a fraud upon the public at worst to "pass the bill now and if it's not constitutional, let the courts strike it down" in the words of one of the bill's proponents.

Rep. WOODS BOWMAN,
11th District.

[From Chicago Tribune, Apr. 3, 1977]

'WASTE-OF-TIME BILL'

CHICAGO.—Recently the Illinois House voted to define the new crime of obscenity involving a minor (HB 286). Predictions are that the bill will pass the Senate with no difficulty. This is something the Illinois legislature should have done long ago—before pornography purveyors discovered the child porno market. This much is clear.

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I offered several amendments to try to remedy these defects but without much success. There are still serious defects. I predict there will never be a sustained conviction for obscenity involving a minor resulting from the passage of HB 286. It is a waste of time at best and a fraud upon the public at worst to "pass the bill now and if it's not constitutional, let the courts strike it down," in the words of one of the bill's proponents.

WOODS BOWMAN,
Representative, 11th District, Illinois General Assembly.

[From Chicago Sun-Times, Apr. 4, 1977]

NO PORN LAW NEEDED

Now we are being told that as a deterrent to child pornography there is a bill being introduced to link it to organized crime, which may or may not be the case. Yet, this would only hinder the elimination of this hideous practice.

In Illinois, as in most states, there are already laws against taking indecent liberties with children. There are also laws that state "anyone having prior knowledge of a crime to be committed is guilty of being an accessory before the fact," that "anyone having knowledge of a crime and either aids, abets, solicits or attempts to aid such other persons in the commission of such an act, is also accountable for such offense."

This clearly does not involve any infringement of First Amendment rights. Why waste time with new laws? Let's enforce the ones we have, laws against indecent liberties, child abuse, negligence and lewd and lascivious acts. These are sufficient.

MICHAEL J. LEWIS.

ATTACHMENT VII

(Methods used by Prof. Frank Osanka to create public awareness, public concern, and public action regarding the sexual abuse of children)

[From Joliet (Ill.) Catholic Explorer, May 27, 1977]

OSANKA TESTIFIES ON SEXUAL ABUSE OF CHILDREN

LOCKPORT.—U.S. Representative Peter W. Rodino, Jr. (D., N.J.), chairman of the House Judiciary Committee, announced May 15 in Washington that he has ordered hearings on the exploitation of children in pornography and prostitution. On May 17, Professor Frank Osanka of Lewis University accepted the House Judiciary Committee's invitation to be the lead-off witness of the Hearings which began Monday morning, May 23.

Prof. Osanka began researching sexual abuse of children last year in seeking data for his special course entitled "Child Abuse and Neglect Prevention and Treatment," the only course of its kind in the United States.

Osanka discovered that only six of the states have laws specifically prohibiting the use of minors in an obscene performance, and tests of these statutes showed them to be too weak for meaningful prosecution.

In addition, to discovering how widespread exploitation of children in pornography and prostitution is. Osanka was so startled by the lack of protective laws that he initiated a public awareness campaign. Osanka felt Americans would demand positive corrective action if they became aware of the nature and extensiveness of sexual exploitation of children, particularly commercial use of preteens in sexual scenes on playing cards, in picture magazines, and in 8mm movies.

According to Osanka, "The only reason that the public is not aware of this social cancer is because most people simply do not enter the so-called "adult bookstores." The only reason I learned of child pornography is because many of my Social Justice students at Lewis University are full-time law enforcement officials. Normal people have to just see a little of this trash to become a crusader against it."

Osanka's public awareness campaign is designed to bring voter pressure on State and federal legislators to create an enact law protecting both children and society from this kind of exploitation.

His first step was to organize a joint press conference in February with his friend Dr. Judianne Densen-Gerber, President, Odyessey Institute of New York. Osanka and Gerber showed examples of the smut using children to the gathered press. These materials are available in Illinois and other states.

Prof. Osanka later provided expert testimony before the Illinois House of Reprepresentatives Judiciary Special Subcommittee on Obscenity, organized protest pickets outside of Chicago "adult bookstores" which openly sold child pornography and made himself available for newspaper interviews which resulted in stories about the sexual abuse of children in the Chicago Tribune, Chicago Sun-Times, Springfield Journal-Register, and the Bloomington, Indiana Sunday Herald-Telegraph.

Osanka has cooperated in law enforcement and Chicago Tribune investigations of the sexual exploitation of children in pornography and prostitution.

At the invitation of Alderman Edward M. Burke (14th ward), Osanka will provide expert testimony on child pornography in hearings before the Chicago City Council which will begin in late May.

[From Joliet (Ill.) Herald-News, Nov. 14, 1976]

PETITION SEEKS CABINET POST TO REPRESENT CHILDREN

(By Barbara Mayer)

Cara Bashold lived only three days, but her tragic death could have repercussions for millions of American children.

Cara, the 3-day-old New York City infant who was devoured by a starved German Shepherd Sept. 6, has become a symbol for a nationwide petition drive.

Pointing to Cara's death as "a tragic and outrageous statement about the indifference of our social institutions," 56 prominent Americans are seeking support for a Cabinet post to represent children's interests.

They hope to collect a million signatures to give to President-elect Jimmy Carter for inclusion in his January inaugural address.

One of the leaders of the drive is Franklin Mark Osanka, associate professor and undergraduate director of the Institute for Studies in Social Justice at Lewis University.

Osanka participated in a conference Sept. 13 in Philadelphia called to draft a "Declaration of Interdependence for Children" modeled on the historic declaration of 1776.

"The idea of a children's Bill of Rights is obviously a public relations effort," Osanka explained. "But it's not a gimmick—it's meant to nonviolently alert people to the problem of child abuse and give concerned persons a chance to express themselves."

Why is a Bill of Rights needed? Because there are too many children like Cara Bashold, like Johnny Lindquist, who slip through the fingers of social agencies designed to help them.

"HEW (Department of Health, Education and Welfare) figures indicate that perhaps five children a day perish and 12 a day suffer permanent brain damage directly related to child abuse," Osaka said.

And there are other grim statistics:

Seventeen million children (one out of every four) live in poverty.

As high as 5 percent of the nation's children are incest victims.

The United States ranks 16th in the world's infant mortality rate, 34th for its nonwhite population.

Three-fourths of the 1.7 million mentally retarded children in America live in slums.

Less than 10 percent of the children afflicted with mental health problems receive help.

Osanka, who teaches courses in child abuse and neglect at Lewis, has a special empathy with neglected children. Orphaned at the age of 3, he lived in 14 foster homes as a ward of Cook County.

He notes child abuse is a widespread problem affecting people of every socioeconomic level—"It's not just the oddball down the street. It's everybody's problem."

Abuse can be blatant—scalding a baby or pushing a toddler down the stairs—or subtle—ignoring a child or instilling him with a defeatist, negative view of the world.

"Verbal abuse—constantly calling a child negative names—results in a negative self image and feelings of inferiority," says Osanka. "In some cases, it can give the child a license to be deviant.

"Parents who emotionally abuse their children often provide a totally negative emotional environment. They may fight all the time, tell the child it's a dog-eat-dog world, teach him to assume that everyone is bad. This kind of home produces the instinct to shoot first and ask question later."

Only the more blatant cases of abuse generally come to the attention of lawmakers. The subtler forms are extremely hard to identify, Osanka said.

"There's a lot of gray area because we're talking about the development of a human being, a future adult. We're talking about how that person is conditioned to view the world."

He points out there's evidence that Lee Harvy Oswald, Sirhan Sirhan, Charles Manson and John Wilkes Booth learned violent behavior patterns early in childhood as a way of getting attention from their parents and other adults.

"What we're doing is allowing adults to produce criminals, to produce sociopaths and psychopaths who will prey on society," he said.

Osanka contends that while there has been much progress in the area of child abuse reporting and prevention, much more needs to be done.

"In every state there is some new child abuse and neglect reporting law," he said. "Teachers and physicians are required by law to report and investigate cases of abuse and neglect.

"Hotline systems have been fairly effective and groups like Parents Anonymous are doing a great deal to reduce the incidence of abuse, probably much more than the official bureaucracy. The problem is we don't have enough people in the Department of Children and Family Services to handle all the cases, and our court referral system is not adquately equipped to provide therapy for abusive parents."

Osanka believes more education for parenthood is needed, and says parents must be made to realize children are not their property.

"Does the bearing of a child insure the right of treating the child in a less than human way?" he asks. "Because of the widespread notion that children are their parents' property, the public has been hesitant to interfere. People are much quicker to report the abuse of an animal than the abuse of a child.

"Maybe children ought to have a right to divorce their parents. In some cases, society should be able to intervene and sever the rights of those parents to the children."

The petition drive is enlisting the support of community organizations like the League of Women Voters and Parents Anonymous to reach persons concerned about children's problems.

Anyone interested in signing a petition or participating in any way may contact Osanka at 838-0500, Ext. 835.

[From Bloomington (Ind.) Sunday Herald, Mar. 6, 1977]

CHILDREN IN PORNOGRAPHY

SOCIOLOGIST CONDEMNS INCREASE OF NEW 'CHILD ABUSE' FORM

(By Holly Stocking)

The use of children in explicit sexual materials is on the increase, according to an Illinois sociologist.

Children as young as three and four years old are being photographed as they engage in sex acts with other children and with adults, he says. And the pictures are being sold in magazines, pamphlets, and 8 mm films in major cities across the country.

Frank Osanka, associate professor of social justice at Lewis University in Glen Ellyn, Ill., says use of children in erotic literature and films represents a relatively new, but apparently growing trend in adult materials.

And he is deeply concerned—not only because of the possibility of negative impact on children, but also because of the effects he fears such materials will be on some of the people who view them. Moreover, he wants something to be done about it.

"It's absolutely tragic and terrible," Osanka said during an interview at the Executive Inn. Not only do these materials show children engaged in sexual activities, but "it's clear," he said, "that they have been involved in this sort of thing for some time."

Osanka was one of the organizers of a recent nationwide demonstration against the use of children in pornography, and he has appeared as an expert witness in hearings on obscenity and pornography before the Illinois General Assembly.

He teaches a course on child abuse, and his students, many of them law enforcement officials, have brought to his attention a number of films, magazines and pamphlets making use of children as subjects.

Some of the magazines are from Europe, some appear to be from the Far East, and increasing numbers are from California and New York, according to Osanka. And they show children engaging in a wide range of sex-related activities.

Among the worst, Osanka says, is a publication called *Child Discipline* which the sociologist describes as a primer for adults who want to get sexual gratification from beating their children.

The publication reportedly shows pictures of adults getting sexual satisfaction by spanking, hitting, and otherwise physically assaulting youngsters.

Osanka attributes the proliferation of such materials, in part, to an influx from other countries. But he also attributes it to mounting problems with state obscenity statutes.

In Illinois, for example, he says that the obscenity law has been declared unconstitutional on the basis of vagueness, with the result that there is no longer a law against obscenity, in the state.

In effect, he says, this means that anything goes, at least for the time being. All of the materials he mentioned are sold over-the-counter without apparent fear of prosecution.

Osanka, a soft-spoken father of four, says the use of children in sexual materials is a "clear case of child abuse."

"Children deserve a better break," he says with quiet intensity. "They have the right to be raised as normal human beings in so far as that is possible.

"If they want to become abnormal later on, that's their own choice . . . but kids don't have the intellectual capacity to make such judgments. They just don't have any choice in these areas."

Osanka said one way to control such activities is to strengthen child abuse laws so as to make involvement of children in explicit sexual acts a criminal offense.

Another alternative, he says, is to license media which portray children.

The sociologist says he is aware that such a proposal has serious implications for First Amendment freedoms, but it is his belief "that our founding fathers, in guaranteeing free speech, clearly did not mean to protect people involved in this kind of activity."

Osanka's concerns extend not only to children who are subjects of such materials, but also to people who purchase and use them.

The very existence of materials of this nature legitimizes them in the mind of some users, he contends, and there exists a danger that sexual abuse of children will become "a social norm by default."

At the very least, he believes, potential problems associated with such literature ought to be brought before governmental bodies and discussed in "a rational, objective manner" with an eye toward creating laws to cope with any undesirable effects.

One stumbling block to solutions at the moment, he says, is a lack of public awareness. "Most people simply don't frequent these places," he says, referring to adult bookstores.

In Bloomington, a reporter located one magazine which advertised "naked children" on its cover. It was to College St. Adult Books at the corner of 14th St. and College Ave.

However, none of the more explicit materials described by Osanka were located, either there or in The Library bookstore at 206 E. Seventh St., or Danish Treats at 501 N. College Ave. The Pegasus Adult Bookstore at 223 W. Sixth St., was closed.

The salesclerk at The Library, when asked if he had any materials featuring children under 14, said "No, the heat's on in that area."

The man indicated that the "heat" was on a national level, suggesting that perhaps recent efforts by Osanka and others were beginning to take effect.

"The owners don't want us to go beyond the typical teenage stuff," the clerk said.

Osanka said he was gratified to learn that his efforts might be having some impact. But he added that "unfortunately, such effects are probably shortlived."

Osanka was in Bloomington attending a workshop on child neglect and abuse sponsored by the Department of Special Education and the Developmental Training Center at IU, the Council for Exceptional Children, and the National Center on Child Abuse and Neglect.

He will discuss children in pornography on a midnight-to-3 a.m. radio talk show on Monday. The program will be broadcast over WLS out of Chicago.

ATTACHMENT IX

(Drafts of protective city ordinances authored by Acting Mayor Michael Bilandic and Alderman Edward M. Burke (14-Ward) of Chicago)

MOTION TO AMEND

Move to amend said substitute ordinance amending Chapter 192 of the Municipal Code of Chicago by adding the following paragraph to Section 192–10.2:

192–10.2.

If, upon conviction of any person found in violation of Sections 192–9, 192–10, 192–10.1, 192–10.4 or 192–10.5, the court finds that the material depicts or portrays persons of pre-pubescent years, then said person found in violation of said sections shall be fined in an amount not less than five hundred dollars nor more than one thousand dollars or be imprisoned for a period not exceeding six months or be both so fined and imprisoned.

EDWARD M. BURKE,
Alderman, 14th Ward.

ATTACHMENT XIII

(Chicago opinion: Letters to the Editor and editorials, Chicago Tribune and Chicago Sun-Times)

[From Chicago Tribune, May 19, 1977]

THE CHILD PORNOGRAPHY PLAGUE

Rarely has an investigative reporting series aroused as much shock and disgust as the four-day series which The Tribune has just printed on the exploitation of children by pornographers. Not even the most ardent civil libertarian, not even the boldest advocate of 1st Amendment rights, can reasonably defend conduct which can corrupt a child's mind and distort his attitude for the rest of his life.

The apparent extent of this new cancer is as shocking as the sickness of it. It's especially distressing to learn that much of it originates in Chicago; the plague might have continued to fester and spread if it had not been for Police Supt. Rochford's assignment of a special detail to the matter, and for police cooperation with The Tribune's investigative team.

But the unanimity of revulsion, alas, does not translate into a unanimity of ideas on how to combat the problem. For every suggestion, legalistic objections and potential obstacles are raised. First Amendment freedoms, privacy, sexual equality, federal-state relationships, and rules of court involving testimony by minors, are among the factors cited as in one way or another making decisive and effective action difficult.

This is hand-wringing and soggy defeatism. The corruption of children, whether for the immediate sexual gratification of the corrupters or for the vicarious gratification of others through pornographic photographs, is a clear-cut disgrace which the law should be able to define and deal with if it doesn't already.

The first thing to recognize is that there are two fronts on which the war must be fought. On one, the enemy are those who take direct part in the corruption of young minds and bodies—whether boys or girls, for homosexual or heterosexual purposes, for photography or otherwise. The second is against the publishers and distributors who provide a lucrative market for what is known as "chicken" or "kiddie-porn."

On the first, we tend to agree with Elmer Gertz, the civil libertarian lawyer, who told our reporters that it should be possible to fight the battle by means of existing laws and that there is no need for a proliferation of new laws. To pass more laws than necessary is to cheapen all of them, just as inflation cheapens the dollar. And like most states, Illinois already has a number of laws involving the sexual abuse of children; it is a violation to take "indecent liberties" or to "contribute to the delinquency of a minor." In general, conviction requires proof of physical actions. But the "contributing" statute also includes "any lewd act," and this ought to include pornographic photography. If the courts determine otherwise, then legislation may be needed.

But it will be hard to stamp out child pornography as long as there is a profitable market for it; and despite the objections of libertarians, we can see no effective way to deal with this except through obscenity laws. So there is new reason for Illinois to push ahead with a new obscenity law to conform with the Supreme Court's ruling and to replace the earlier law which was ruled unconstitutional.

It's good to see that on the federal level, too, Congress has reacted to the disclosures. Rep. Peter Rodino, chairman of the House Judiciary Committee, has ordered the crime subcommittee under Michigan Rep. John Conyers to see what if any federal action may be necessary. Congress could, for example, extend the Mann Act to prohibit the transportation of males as well as females across state lines, with emphasis on child pornography.

But as we said, we are not going to measure progress against this plague by the number of laws passed; we are going to measure it only by the results. So we must look first to the police and the courts, and their job is to figure out how results *can* be achieved; not to find excuses why they can't. We're not going to settle for half a job done.

[From Chicago Sun-Times, Feb. 9, 1977]

Don't Children Count?

Your coverage of "pre-teen porn" prompts this letter.

We supposedly live in a free society for all people. How free are these children (who are little people) being used for porno magazines, films and prostitution? Is this the future generation being cultivated now? What about laws? Don't they count for children? When these victims grow into adults, what then? It will be too late to punish the criminals and undo the damage.

If for some unknown and incomprehensible reason there are no existing laws to protect the civil rights of our "little people," let's get them passed immediately.

Mrs. Jean Siciliano.

[From Chicago Sun-Times, Feb. 16, 1977]

PROVE THE WRONG

Even more abhorrent to the ideal of free speech than the conviction of Larry Flynt was your editorial "Smut with 6-year-olds." To think that a major newspaper would advocate censorship in any form was, until your editorial, unthinkable.

And don't deny it. You said "the dangers to the children involved . . . take it beyond a free-speech issue."

The crime is not the viewing or reading of this material; it is the corruption of the children. Let the prosecutors prove, and let the juries be convinced, that the publishers, booksellers and others are abettors or conspirators in the crimes of contributing to the delinquency of minors and assault on minors with intent to gratify sexual desires. The laws are on the books.

NATTY BUMPPO, *Brownsville, Ky.*

[From Chicago Tribune, May 31, 1977]

"HATRED OF CHILDREN"

MORTON GROVE.—It is good to see and hear the uproar over the use of children in the production of pornography. However despicable this development, though, it is merely a surface symptom.

The root of this disease is a growing hatred of children in our society, which increasingly consider them a burden rather than the treasure they are. The most dreadful manifestation of this attitude is the willingness to treat unborn babies as not human and to submit them to the abortionist's cruel instruments, sanctioned by an inhuman legal system.

While the use of children in pornography and prostitution is correctly seen as the equivalent of murder, these children are still alive, and there is hope that with proper treatment many of them will recover from their nightmare experiences. There is likewise hope that laws will be enacted to deal with the beasts who prey upon them.

But aborted children will never recover from their treatment. Their agonies are their death agonies. They are ruined permanently. But the law calls it something else than murder and protects the killers rather than the innocent victims.

Considered objectively, which is the more barbaric, the more depraved: the use of an estimated 100,000 [give or take a few] children in the production of porno materials, or the killing within the law of millions of unborn babies?

JOSEPH T. GILL.

[From Chicago Tribune, May 21, 1977]

DESTROYING CHILDREN

CHICAGO.—After reading "Child pornography: sickness for sale" in The Tribune May 15, I got physically sick myself. If our laws are so weak we can't fight these terrible things, they should be changed.

Any nation that lets her children be destroyed [for as a psychiatrist quoted in this article stated they are "emotionally and spiritually murdered"] will be severely punished by God. Being a mother of two young children myself, I shuddered when I read of three-year-olds being sold into prostitution and pornography. Let's unite to fight this terrible evil.

ELAINE SERLAS.

[From Chicago Tribune, June 1, 1977]

CHILD PORN PATRONS

CHICAGO.—You should be commended for your coverage of children in pornography. Your articles have focused on the pornographers, the children, and the law enforcers campaigning against child porn. But I think you should illuminate one last facet: the customers of child porn.

Your coverage should shift. Enough about the pornographers and their victims. What of the growing percentage of the public that patronizes child pornography? What's their motive? What should be done about them? Congressmen want to criminalize the production of child sex material, but some fear that punishing the buyers of child porn will interfere with the 1st Amendment. The trouble is, no matter how tough they make it, pornographers will keep producing if there are customers who keep on buying.

To deal with child pornography we must understand the motives of those who support, patronize, and further it.

DON CRESTLE.

[From Chicago Sun-Times, Feb. 9, 1977]

SMUT WITH 6-YEAR-OLDS

A week ago, a state study released here estimated that about 100 Illinois children are sexually abused every day.

Later last week, a child-abuse specialist from New York said in Chicago that many children are "trapped into pornographic filmmaking by unscrupulous operators and into prostitution by procurers. In some cases, parents offer their own children to pornographic film producers or combine with their children to make such films."

To back up her claims, she showed two films: one of sex acts among three boys aged 11 to 13, another showing acts between a 1[illegible]-year-old girl and an 8-year-old boy.

Those degrading films are not uncommon. Others like them, as well as books on the same theme, can be purchased citywide.

Abhorrent? Very. And more troublesome than the simple First Amendment question that embroils so much of the debate over "adult" books, magazines and films. Adults are involved in child-pornography cases, too—but mostly involved are those making a profit through sexual exploitation of minors.

Alan Reitman, an Associate director of the American Civil Liberties Union, points out the problem: "That stuff is gross . . . but I think it's dangerous to tackle the problem through the mechanism of censorship." Dangerous indeed. But what of the dangers to the children involved? They take it beyond a free-speech issue.

New York lawyer Charles Rembar, who successfully defended "Lady Chatterley's Lover" in obscenity suits during the '60s, makes another point: "Nobody's going to pose these kids if they can't sell it." That position, apparently, has goaded New York State legislators into drafting a bill that would provide long prison terms for anyone producing, promoting or profiting from pornographic performances by children.

The constitutionality of some of that may be questioned, but it's beyond question that the human parasites who profit deserve as much punishment as possible.

Illinois itself appears to face more general child-abuse problems than the making of movies or magazines. In fact, State Rep. Aaron Jaffe (D-Skokie) is preparing legislation that would tighten laws on incest and reporting abuse cases.

But so long as profiteers parade children as young as 5 or 6 before the cameras for sex acts—and get away with it—many of the callous and twisted attitudes that lead to abuse in the first place will continue.

[From Chicago Sun-Times, May 30, 1977]

TO BUYERS OF CHILD PORN

FLOSSMOOR.—All of the publicity regarding child pornography is necessary and proper but most of it overlooks the fact that it exists in response to market demand as much as producer effort. There are those who will vent outrage over

this phenomenon and who will call for arbitrary efforts to halt production and distribution of child pornography.

Let none forget the line that the mobsters who bankroll these operations often throw out: "If there wern't people to buy our products and services, we'd be out of business." That credo applies to gambling, narcotics, and regular prostitution [as opposed to the specialized type], as it does to child pornography.

Those who support child pornography should be called upon to stop spending their money to degrade and emotionally kill children. No town can have its people supporting unpleasantness of this sort and expect to come out of it without having lost some of its spirit.

ROBERT R. DIXON.

Mr. CONYERS. Our next witness is attorney Charles Rembar who is a private practitioner in the city of New York specializing in libel and copyright law, representing various elements of the publishing industry. He is a Harvard graduate and Columbia Law School graduate. He is known for his role as counsel for many publications, including "Lady Chatterley's Lover," "Fanny Hill", and "Tropic of Cancer," having served as successful appellate counsel in these three cases. He has most recently written an Atlantic Monthly article on the law of obscenity.

Mr. Rembar, we invite you to the witness table. On your behalf we would indicate that you do not have a prepared statement but that based upon your recent activities and the immediacy in which you were pressed into service, the committee is willing to forgo anything in writing at this time and you may subsequently send us something to be incorporated in the record, if you wish. We would welcome that.

TESTIMONY OF CHARLES REMBAR, ATTORNEY FROM NEW YORK CITY

Mr. REMBAR. The last two questions to the previous witness indicates this committee's concern with constitutional problems. I would like to address myself to that concern.

There are two fundamental propositions that I believe we need to keep in mind when we are talking about the First Amendment.

One is that it deals with expression, not with action, conduct, or behavior. The most liberal of our Supreme Court Justices have always been careful to draw a distinction between the two. Even where they are combined, even when you have a situation that mixes elements of conduct and expression, the Supreme Court has been willing to allow some restriction. It is the situation that Justice Douglas referred to as action brigaded with expression.

The second proposition that I think we ought to keep in mind is that the first amendment is not absolute, despite what the great Justice Black had to say on the point. The exceptions are just too obvious. Even where pure expression is involved, not action, we place some limits on speech and the press. We penalize fraudulent statements made in connection with the sale of securities, for example. We still have a law of libel and a law of privacy, although they have been much diminished. We can go back to, years ago, the example of Chief Justice Hughes—publication of information about the sailing dates of troopships in time of war.

So we know we have some exceptions. The question is: Does this type of legislation fall within the exceptions? In my opinion it does. In my opinion it is justified. It deals primarily with action, with a certain kind of conduct that I believe most of us agree is a social evil. It hits expression only as a corollary, in my judgment a very necessary corollary. It is necessary because, as the previous witness pointed out, the kind of action the bill aims at is not done in public places. It is an impossible prosecutorial job to try to get at the acts themselves.

So the bill goes further. It penalizes the transport, distribution, and sale of the product of this activity, that is, films and magazines in which the photography of the conduct you want to stop appears.

Now the bill does it, in my judgment very wisely, without ever using the word "obscene." I think that is wise for two reasons.

One is that the concept of obscenity has in the past been used to limit the kind of expression that we don't want to see limited. It is not so long ago that book sellers selling Theodore Dreiser's "An American Tragedy" were convicted of a crime under antiobscenity laws.

So if you use the concept of obscenity to try to get at the evil you are dealing with, you would on the one hand prompt courts to limit the legislation for fear that by broadening the concept, they will impinge on other areas of expression that are entitled to freedom.

On the other hand, by using the word "obscenity" to deal with a situation that obviously appeals for a remedy, you may be inducing the courts to broaden the concept of obscenity, and such broadening has dangerous consequences for first amendment freedoms. The word "obscenity" is unnecessary to what you are trying to accomplish, and its use could very easily have one or the other or both of these bad results, depending on whether the particular court was moved more by the threat to free expression or by the need to deal with the particular evil—in the one instance reducing the impact of the statute and in the other creating bad precedents for the first amendment generally. The proposed legislation wisely concentrates on the factual situation that needs to be dealt with, and avoids the word "obscenity." You have a bill that deals with the activity itself, with the transport and the distribution of the photographs and with their sale.

Now you are going to run into some objections. I know, from my friends at the American Civil Liberties Union. If they come down here to testify, they will say it is all very well to try to limit this kind of behavior, but you must not touch the magazines or the films because there you are getting into the area of free speech and free press.

In my humble judgment, that attitude is totally unrealistic. There is no way to deal with the evil you are trying to remedy except through dealing with the sale of the magazines and films. The sale of the product is the economic motivation for the conduct. That is what fuels the activity, or at least a great part of it.

So I think if you are going to oppose this sort of legislation, you ought to come right out and say it is not worth bothering about, we don't consider this much of an evil. Don't say that there are other ways to do it. There are not other ways to do it.

Once you get past the principal first amendment problem—and I submit you do because you have here a narrowly defined area and a good practical reason for restricting the expression—once you get beyond that, you are left with certain subsidiary problems that involve both the first amendment and the due process clause. Is the statute so vague that you cannot send a man to prison for violating it? Is the element of scienter, the element of guilty knowledge, sufficiently taken care of? Here I think the bill as drafted could use a modification or two.

In subsection 1 of section 9–a there is a reference to an individual who "knowingly transports ships, or mails," and then, in subsection 2, to the individual who "receives for the purpose of selling or sells." I think the word "knowingly" belongs in subsection 2 as well as subsection 1.

Another problem on the void-for-vagueness objection I think comes in when the bill defines "prohibited sexual act." The word "bestiality," for example, has two or three meanings in the dictionary. I think the bill ought to say just which one it has in mind. It is not too difficult to do that. (I) and (J) seem to me to be unnecessarily broad. "Any other sexual activity" could take in kissing, fondling—even holding hands, I suppose.

Nudity as such is something that I think goes beyond the range of proper legislation. Perhaps we might substitute in place of subsection I, some language such as "any other genital contact or activity" and then take in the second part of J as a modifier, the language beginning with the words "depicted for the purpose."

One other item in the bill that to my mind raises some questions is the age 16. I believe there are still States where you can get married at the age of 16. Also, we know that there are different rates of maturation for girls and boys. Without trying to rewrite the bill, we might use some standards such as 12 for girls and 14 for boys. I do think 16 is a little bit aged.

But those are small points. In general the bill, in my judgment, is a good one and one that does not run afoul of the first amendment.

I would like to add a very small personal note here. I imagine generally when lawyers come and testify to committees, they come as representatives of groups whose lawyer they are, who are worried about the legislation or, on the other hand, want it supported. My clients are mainly writers and publishers and people in the film and television business. I think most of them, if they didn't give it enough thought, might oppose this legislation. I would think they would be wrong. I think this legislation ought to be supported.

The first amendment is a great shield for people in the business that I represent and it should not be abused. By stretching it too far, by making it too thin, we enfeeble it, and my clients may lose the kind of protection that they have gained from various Supreme Court decisions in the last 10 or 12 years. They have to be realistic and allow this Congress and State legislatures to act where the situation calls for action and the impingement on first amendment freedoms is minimal.

Thank you.

Mr. **Conyers.** We are indebted to you, Mr. Rembar, for your very precise evaluation of this prospective piece of legislation. I have only one question. It goes to the larger area that we are concerned with.

That is, we seem to be in a permissive society in which we are having difficulty controlling pornography of any kind, most especially this that involves younger children. We seem to be in an age of permissiveness in which the movies, television and just the general atmosphere seems to be contributing to what could be termed an era of promiscuity. What effect, if this legislation were passed, do you think that it would have on this larger atmosphere that seems to be prevailing us at this point?

Mr. **Rembar.** The problem you describe is a real problem. It is one that I think in general cannot be dealt with by the law. We cannot regulate too much. It is very difficult to instill morals by legislation. I think we are going through a period that I once described as an acne on our culture. It is an adolescent period. I think it will go away. Acne is not fatal.

But meanwhile, it is important that the law should not stand aside altogether, because the law is our teacher. We don't get our conscience from above. We are not born with it. We learn it from our parents, from our teachers, and from the law.

I think it is important for the law to say that the first amendment requires that we put up with an awful lot that we don't like, but it does not require that we put up with everything. Lines can be drawn at certain points.

This proposed legislation, in my opinion, provides a good place to draw a line.

Mr. **Conyers.** I appreciate your response.

Mrs. Holtzman, do you have any question?

Ms. **Holtzman.** Thank you, Mr. Chairman.

I am sorry I missed some of your testimony. I would like to ask you if you have had a chance to review State statutes in this area to determine whether they would be adequate to deal with this problem if they were effectively enforced?

Mr. **Rembar.** This is the shortest answer I will give all day: No.

I have not had a chance to review the statutes. I have considered the problem only from a constitutional point of view. I don't know what statutes exist. It seems to me statutes can be drawn to deal with that.

Ms. **Holtzman.** Did I hear you correctly when you said you thought the term child ought to be redefined so that girls above the age of 12 and boys above the age of 14 should be excluded from the scope of this legislation?

Mr. **Rembar.** I made that suggestion. Yes, I think the age of 16 is a bit high, especially for girls.

Ms. **Holtzman.** You don't see any constitutional problem dealing with boys and girls differently?

Mr. **Rembar.** Not where it is biologically justified.

Ms. **Holtzman.** That argument has been made, I would say to you, in all due respect, to support all kinds of racist and sexist legislation. I will just say that I would disagree that we would not want to protect girls over the age of 12 years.

Does this bill cover those people who produce the films?

Mr. Rembar. I would like to add to what I said in answer to your question a moment ago, that biological justification exists. It is just abused, the way children are abused, in many areas.

Ms. Holtzman. I will stick to my previous comment. Would you answer the question I have just asked you which is, does this bill cover those who produce the films, in other words, those who provide the money or those who purchase them for the purpose of transportation? It seems to me that the only people who are covered are those who photograph children in these acts, persons who cause or knowingly permit a child to engage in these acts, and those who receive the materials for the purpose of selling them.

But do we reach the producers of these materials in this bill and, if not, should we?

Mr. Rembar. I think we should. As I read the language, it seems to me that section 8(a) does. I don't know how you produce the film without doing what section 8 describes.

Ms. Holtzman. Suppose you purchase the films after they have been made and then retransmit them. Would someone in that category be covered?

Mr. Rembar. I think there they are covered in section 9, yes.

Ms. Holtzman. I have no further question, Mr. Chairman.

Mr. Conyers. Thank you.

Mr. Gudger, do you have questions?

Mr. Gudger. Yes, I think I can make this rather brief.

As I understand it, you are saying, Mr. Rembar, that State laws can prohibit distribution to minors, can prohibit the nuisance display to a captive audience so to speak, or the marquee display of something that is obscene or could be socially unacceptable to the unwilling observer.

You are saying that the same prohibition upon distribution could be drawn against the manufacture, distribution and sale of items which depict children in unnatural acts.

Now, in saying this, are you contending that society can protect the model, that is the child who poses for the pornographic pictures, or that society can go beyond protecting the model and protect society itself from the distribution of materials showing unnatural or socially unacceptable conduct referrable to children? Do you seek to protect the model only? Do you seek to protect the child who is not a model but may see these acts depicted in this illustrative material and thereby be degraded or himself diverted in his normal acts or do you see both of these as justification for us to move in this area?

Mr. Rembar. Well, I think that where you do have a captive audience, you do have another problem that can be dealt with that is not dealt with in this legislation.

I would add that I think the child in the home in front of a television set constitutes a captive audience. What is shown in theaters, on the other hand, I think falls outside that area. If there is not public display that creates the problem for the passerby that you mentioned, I would not favor restrictions on what is shown in theaters, except as it might run up against something like the present bill.

Mr. Gudger. Do you see this bill as protecting the child, the model, or do you see it as protecting society from the display of abnormal child conduct?

Mr. Rembar. The former, Mr. Gudger, the former. But in a broader sense, it protects society because if you have children subjected to this, you have children who are likely to grow up with problems.

Mr. Gudger. Do you see the provisions here relating to the actual process of photographing, and the actual process of publishing as being subject to State control or subject to Federal control?

Mr. Rembar. I feel it is subject to both.

Mr. Gudger. In the latter instance, that is Federal control, this would be only in the event it is being produced for interstate distribution, therefore, interstate commerce would be involved?

Mr. Rembar. Yes, sir, right.

Mr. Gudger. So you do see that possibly there might be a justification for the development of State statutes prohibiting what is published as well as the Federal statute projected here.

Mr. Rembar. Yes, I do.

Mr. Gudger. Mrs. Holtzman raised the problem as to the publisher as distinguished from the photographer or the one who sets up the arrangements involving the child, both of whom are involved in section 2251. Do you see the publisher and anyone who is arranging for these publications as being subject to indictment for conspiracy to violate even though he might not be specifically referred to, the printer, the publisher, the man who puts the business enterprise together?

Mr. Rembar. Yes; I think Mrs. Holtzman referred to the producer of a film who is in an analogous position. It seems to me that the publisher or the producer of the film is knowingly causing this.

Mr. Gudger. Thank you.

Mr. Conyers. Mr. Ertel, do you have any questions?

Mr. Ertel. Thank you very much for your comments. I am glad you agreed to put knowingly in and clear up some of the other problems I saw.

I want to comment on your last answer, picking up the investor in these films who might put his money up. It has been suggested that he would be guilty of a conspiracy to violate and may be an accomplice or accessory under the code which would pick him up under the provisions.

What happens to the man who says, "Don't tell me anything, I just want a return on my investment." Could he be caught as well? That comes under the issue of knowingly. He makes the process run because without the money, it wouldn't go, it is a film to be produced and has any expense, and I recognize a lot don't have that much expense, but if it has expense, how do we get to that individual?

Mr. Rembar. You as an attorney know, of course, that what you have there is a problem of evidence.

Mr. Ertel. A very good problem and we also have the problem of defining the terms.

Mr. Rembar. I believe the word "knowingly" takes care of that situation. From my experience in the film business I find it incredible that anybody would invest in the production of a film without knowing what that is about. You usually have to give them a screenplay before they put up money.

Mr. Ertel. Yes; you might do that and say it is a pornographic film, but not having a child involved. He can say I knew or they told me about the adult situation without the child involved. The same thing as in the investment in drug traffic. We have the same problem. He fronts the money. He gets the return. He knows nothing and he deliberately insulates himself.

I am wondering if there is some way that you can see statutorily we can reach that individual who is probably as culpable but by not being informed, he avoids prosecution.

Mr. REMBAR. I have not given any thought to that. The Congress has, of course, dealt with film investors and what goes on in their heads in trying to knock out tax shelters. The problem seems far removed, but it really isn't that far removed. You are dealing with questions of intent which are always difficult for the law.

Mr. ERTEL. I thought you might just have some suggestions as to how we can reach that statutorily to solve some of those problems.

Thank you for your comments. I realize that is a difficult issue.

Mr. CONYERS. Thank you very much. None of our other committee members indicate that they have questions so on behalf of the entire subcommittee I want to thank you for coming here on such short notice and would invite you to stay in touch with us as we wind our way through what has been called the legislative maze on this particular subject.

Mr. REMBAR. Thank you. If consideration over a longer period would produce any ideas, I will be very happy to submit them.

Mr. CONYERS. Thank you.

Our next witness is Dr. Judianne Densen-Gerber who directs the Odyssey Institute throughout the United States, a psychiatrist, attorney and social activist who has lectured throughout the country on the issue of child sexual abuse. She has worked with Congressmen Kildee and Murphy who are the prime movers behind the legislation currently before the subcommittee.

The Odyssey Institute was founded by Dr. Densen-Gerber to help children involved in drug addiction and child abuse.

Thank you, Doctor. We have your prepared statement which will be included in the record at this point. That will free you to make illuminated points about your statement and other information which you would like to bring to our attention.

[The prepared statement of Dr. Densen-Gerber follows:]

STATEMENT OF JUDIANNE DENSEN-GERBER, J.D., M.D., F.C.L.M., PRESIDENT, ODYSSEY INSTITUTE

On January 13th of this year, I gave the first of many news conferences designed to move America from an overall attitude of hating its children to concern and caring by each and every community for its young. The Odyssey family asked then and asks now that other Americans join with us in proclaiming 1977 "The Year of the Child" and making such the reality.

During the Bicentennial Year, Oddyssey Institute's Concerns of Children Division commenced a petition campaign to collect one million signatures to present to President Carter urging that he declare America's children the Nation's first priority and most valuable natural resource, and that he establish a Special Action Office within the White House which would eventually evolve into a Cabinet Post for the Concerns of Children. America should have a Secretary committed to the future sitting beside the Minister of War, euphemistically called the Secretary of Defense. While our petition campaign moves ahead, many more volunteers and names are needed.

Due to the establishment of this Concerns of Children Division, Odyssey has become a clearing house nationwide for the identifying and reporting of the many atrocities against our young: for instance, first, the admission by the National Center on Child Abuse and Neglect, a Federal agency, that 1 million children at any given moment are in danger of their lives at the hands of their parents or custodians—(Odyssey believes the number to be closer to 4 million); second, while America gave the world the polio vaccine which potentially can eradicate this scourge from the face of the earth as we have done with smallpox, 5½ million American children under the age of 5 remain unprotected; and third, America ranks 31st worldwide in infant mortality for her nonwhite peoples and 16th overall. We, who are first in the space race, cannot be first in our own children's survival.

But, today, I want to share with you yet another atrocity that has come to my attention through Odyssey's Concerns of Children Division—the million dollar sex for sale industry exploiting America's children ages 3 to 16—both through prostitution and pornography.

In August of 1976, Senator Birch Bayh sent me the excellent book by Robin Lloyd, an investigative reporter for NBC in Los Angeles, entitled "For Money or Love: Boy Prostitution in America." Senator Bayh was struck by the fact that both Lloyd and I, working at opposite ends of the country on two different areas of child abuse (he, sexual—I, drug-related physical abuse and neglect) should reach a similar solution; namely the establishement of a Cabinet Post on behalf of our young.

Lloyd's book documented the involvement of 300,000 boys, aged 8 to 16, in activities revolving around sex for sale. He noted there were over 264 different boy and girl magazines being sold in adult book stores nationwide. These magazines—well-produced—sell for prices averaging over $7 each. Most of the children exploited are runaways from extremely abusive and neglectful homes—most, that is, if the children are 8 years old and above. However, younger children used in the production of pornography, some as young as 3, must be provided by their parents or guardians who are themselves often drug addicts, porn performers, or prostitutes, or more frequently, parents having incestuous relationships with their children which they wish to memorialize in photographs or movies to exchange with others who belong to clubs or groups advocating this type of activity. There is one group in southern California whose slogan is "sex by 8 or it's too late." Too late for what? To grow up unscarred, loved and protected; this one representation of the kooky fringe claims 2,500 members.

A common sense guesstimate on my part leads me to believe that if there are 300,000 boys, there must be a like number of girls—heterosexual conduct still being more prevalent than homosexual—but no one has bothered to count the females involved. Lloyd postulates but cannot substantiate that only half of the true number of children are known. Therefore, the possible figure is closer to 1.2 million nationwide—a not improbable figure, considering the Nation's 1 million runaways. How else can a 12 year old support him or herself?

In an April Ms. Magazine article the following startling fact was noted: "one girl out of every 4 in the United States will be sexually abused in some way before she reaches the age of 18." Researchers working with deviant women report that 50 to 70 percent have been sexually traumatized as children. This is truly an illustration of the sins of the fathers being reaped by the children. While we hide from the knowledge of the incest violation, our concern in the area of the commercial sexual abuse of children is even less. Only six States specifically prohibit the participation of minors in an obscene performance which could be harmful to them (Connecticut, North Carolina, North Dakota, South Carolina, Tennessee, and Texas). There is no Federal statute specifically regulating the distribution of sexual materials to children. There is likewise no Federal statute involving interstate commerce which specifically regulates or restricts the production, distribution, or marketing of this material. Forty-seven States and the District of Columbia have some form of laws pertaining to the dissemination of obscene materials to minors.

State criminal statutes which deal with sex crimes often are not helpful, either because the physical activity does not meet the criteria of the statute, e.g., rape, sodomy, sexual abuse, or because they are so broadly worded as to discourage courts from applying them in terms of significant penalties.

Many States have child welfare provisions within their education law which regulate the employment of children in commercial activities. Unfortunately, these same laws either abdicate control when the child is working for a parent or the sanctions are so limited as to pose no deterrent, e.g., $10 fine or 10 days in jail.

Given the paucity of legislation which specifically relates to this activity, there can be little wonder at the relatively scarce attempts at law enforcement. The problems of case-finding and evidence are compounded by a confusion between sexploitation as a form of child abuse and adult obscenity matters. These problems and the attitudes of many judges discourage and actually thwart the few criminal investigations attempted. This year, when one of America's leading pornographers, Edward Mishken, was arrested in New York, one third of the 2,000 square feet of material confiscated involved children. Mr. Mishken pleaded guilty and in spite of the fact that he had many previous convictions, Judge Irving Lang sentenced him to 27 consecutive weekends in jail—I assume so that his work week destroying children would not be interrupted. We, as citizens, must ask why Judge Lang did not give Mishken the 7 year sentence permitted. Mishken was rearrested on like charges within one week.

On January 12th at the Crossroads Store in New York, I purchased "Lollitots", a magazine showing girls 8 to 14, and "Moppets", children aged 3 to 12, as well as playing cards which pictured naked, spread-eagled children. Also I looked at a film depicting children violently deflowered on their communion day at the feet of a "freshly crucified" priest replacing Jesus upon the cross. Next, I saw a film showing an alleged father engaged in uralalia with his 4 year old daughter. Of 64 films presented for viewing, 19 showed children and an additional 16 involved incest.

I have urged citizens to write to their Federal and State legislators urging support of the three pronged approach suggested by Odyssey's Law and Medicine Institute. First, to make changes in your State educational law to require licensing of all media involving children and to prohibit children from participating in any acts which are sexually explicit. Any materials produced in violation would be confiscated and fines would be imposed for violations. Second, to strengthen the child abuse and neglect statutes to include commercial sexual exploitation of children and to make the finding of venereal disease in children under 12 an automatic presumption of child abuse and neglect. In 1976, Connecticut passed a law on venereal disease because there had been two cases of gonorrhea of the throat in children under 18 months of age and one in a child 9 months old within that State. And third, to create greater penalties under the criminal obscenity laws where the offending material involves persons under 16. Within this area, there must be both Federal and State legislation and law enforcement roles.

In the recent months since January 1977 when I have personally purchased magazines carrying the title "Nudist Moppets", "Lollitots", "Chicken Delight", "Lust for Children". "Schoolgirls", "Naughty Horny Imps". "Chicken Love", "Child Discipline" and films such as "Children Love" and "Lollipops No. 10" in cities such as New York, Philadelphia, Boston, Washington, New Orleans, Detroit, Flint, Chicago, San Francisco, San Jose, Los Angeles, Sydney, Melbourne and Canberra, I have become angered beyond description. There comes a point where we can no longer defend by intellectualization or forensic debate. We must simply say "I know the difference between right and wrong and I am not afraid to say 'no' or demand that limits be imposed."

Common sense and maternal instinct tell me that this goes way beyond free speech. Such conduct mutilates children's spirits; they aren't consenting adults, the're victims. The First Amendment isn't absolute. Furthermore, even if I had to give up a portion of my First Amendment rights to stop this stuff, then I'd be willing to do it. When our Constitution and Bill of Rights were written, Franklin, Jefferson, Adams, and Washington were interested in guaranteeing the right to religious, political, and philosophical debate—not to publish a primer instructing a sex molester on how to pick up a child in the park and subsequently assault her ("Lust for Children") or a booklet advocating that a father to have incest with his daughter and illustrating positions to be used if she, at nine, is too small for normal penetration ("Schoolgirls", Los Angeles, and "Preteen Sexuality", Philadelphia). If we use constitutional rights to justify intercourse with children . . . ! In summary, sadly, there is many a scoundrel wrapped in the American Flag.

We are not going to produce mentally healthy and happy children by issuing an executive order that all children must be loved . . . but we can author legislation to protect them and give them a fighting chance in this world. To paraphrase Camus, who spoke for all of us who in some way work with children:

"Perhaps we cannnot prevent this America from being an America in which children are tortured . . . but we can reduce the number of tortured children. And if you don't help us in this . . . who else in this world can . . .?"

You and I can make a difference. Since my initial news conference in January, much of "kid porno" has disappeared from the Nation's adult book stores. It was so simple—the answer was so real—if we can still be outraged, if we can still care, we can begin to nurture a soil for all children to grow straight and strong!

As Eric Ericson wrote:

"Someday, maybe, there will exist a well-informed, well-considered, and yet fervent public conviction that the most deadly of all possible sins is the mutilation of a child's spirit; for such mutilation undercuts the life principle to trust, without which every human act, may it feel ever so good, and seem ever so right, is prone to perversion by destructive forms of consciousness."

TESTIMONY OF JUDIANNE DENSEN-GERBER, J.D., M.D., F.C.L.M., PRESIDENT, ODYSSEY INSTITUTE

Mr. Conyers. We thank you for your interest in appearing before the subcommittee.

Dr. Densen-Gerber. This trunk which I will put up here happens to be pornography I have purchased since January 12 of this year in cities like Philadelphia, New York, San Francisco, New Orleans, Detroit, Chicago, and some other places.

Before referring to that material which I would like you to introduce into the Congressional Record I should like to specifically note these books which were purchased this past weekend in Washington by a friend of mine and my 17-year-old daughter.

Mr. Conyers. I don't know if I can introduce all those books into the record. They will be subject to our review. You either have to leave them with us for our examination or keep them.

Dr. Densen-Gerber. Certainly but I would like to particularly call the committee's attention to the one purchased here in Washington Thursday night, by my 17-year-old daughter who works for Congresswoman Boggs. It was discounted for her because she was only 17. She was not yet of age. It is entitled "Family F---, the Families Who F--- Together Stay Together."

This is a rather dangerous thing for me to do to reveal and I am sure the distinguished Congressman from California, Mr. Dorman, who will back up what I am now about to say. One week ago, I was the keynote speaker at the Citizens for Decency through Law in Cincinnati and the founder of that organization, Charles Keating, Jr. whose brother was a Member of the U.S. Congress from Ohio, reported the following story:

About 3 weeks prior to that time, Larry Flynt came to Cincinnati to speak at a college fraternity at the University of Cincinnati. He offered a $200 bounty if anyone would obtain sexually kinky material for publication in Hustler on Mr. Keating's 19-year-old daughter. Sadly she was sexually molested within the week. So we are not dealing with a nice group of people. I am now providing protection for my own children.

Mr. Conyers. Would this legislation have some effect upon that kind of conduct?

Dr. Densen-Gerber. Only because we must first understand, Congressman Conyers, the nature of the people involved in these activities. We are not dealing with little old grandparents at home who want to photograph their newborn grandchildren bare on bearskin rugs. We are dealing with organized crime, the same group of people who filled this country with narcotics prior to their beginning to produce and distribute this material.

There were several questions asked of an earlier speaker about the need for the Federal Government to be involved. Such involvement is absolutely necessary. The materials move freely from the three countries that appear to be the major suppliers of this material. They are, of course, the United States, producing the slickest of the magazines and the most well put together as well as Thailand and Scandinavia.

There is no question that we need international control. I find it singularly upsetting and outrageous that while I cannot buy Heinz catsup in Sydney, Austriala. I can, 3 days after a new edition of "Moppetts," buy that magazine there. Because Odyssey now has a center in Sydney, Austrialia, we have purchased American-made material in Sydney, Canberra, and Melbourne.

I think you should be keenly aware of the fact that the sexual exploitation of children presents a twofold problem. The first is addressed in part by this excellent legislation: the problems of preventing mutilation and destruction to the 2 or 4 or 6 or 10,000 children that are being so photographed. Without a doubt, it is damaging to them.

The Kildee-Murphy bill is primarily directed to preventing damage to children who are sexualized at the time of production. However, second we must look at and consequently begin to develop legislation to protect the children who are being prostituted. The fact that these children, many of them, are now on computers which enables them to be moved from city to city depending on the specific desires of the chicken-hawks or others was revealed to the Nation last week on CBS's "60 Minutes." This demands Federal regulation.

The fact that the children for sexual snuff films are purchased from Mexico is also well known. Less well known is the fact that many of our children have been sold for this purpose abroad. All this demands Federal intervention.

At the root of all this is the disintegration of family values. That is the next point I would like to emphasize.

Robin Lloyd, the author of "Boy Prostitutes in America," "For Love or Money," and I have counted 264 different magazines produced each month that use children. The people who support and buy this kind of material are strengthening their pedophilic fantasies. Now when fantasies are stimulated, people go home and act out. For example there is no doubt that incest is on the rise. Indeed, Dr. Henry Giarretto, the leading worker in incest in the country in his Santa Clara, Calif., project had 50 cases reported by probation to him the first year, 350 cases the second year and he will have over 800 cases this year.

So we must be concerned not only with the kind of visual material and the children who are being exploited, but with the content of the magazines and the crimes against children that it incites.

For instance, this magazine, "Little Girls," featuring a 14-year-old, on the cover promotes the three stories on the front: "My Daddy Taught Me How to Suck C---," "My Cherry Is Gone But I am Glad," "It Hurts But Push Harder" and on the other side, "My Virgin C--- Is Wet and Ready," is not the type of material gentlepersons of the

Congress help the family stay together in spite of what magazine Family F--- says.

A magazine like this one produced in the United States, purchased in Philadelphia in February called "Pre-Teen Sexuality" tells the reader how to penetrate a prepubescent girl who is not yet able because of her smallness to be penetrated in a standard missionary position. This is certainly productive against acting out against children!

Mr. CONYERS. Pardon me just a moment. Could I ask you, since you have defined several of the titles, in view of our time restrictions now that the House is in session now and since it would serve no purpose to merely tell us what the subjects of the stories are in the magazines, that you eliminate that part of your additional remarks here and try to, if you will, restrict your comments to the merits or demerits of the legislation before us.

Dr. DENSEN-GERBER. Then if I may make just one closing statement in this area: this material produces sexual crimes against children. And there are many reasons we have to be against it. The prepubescent child having intercourse does not have a vaginal pH which protects against infection. Work in Australia by Dr. Malcolm Coppileson, a gynecologist and Odyssey Board member has shown that children who have prepubescent intercourse have the highest incidence of cervical carcinoma of all women at early ages in their twenties and thirties. Therefore we are talking about damage physically as well as emotionally and other psychological ways. Girls at nine were not designed by nature to satisfy the perverted needs of adult males.

Also, published are primers to tell people how to pickup children in a park molest them and not be arrested.

The bill is a good bill. It is a first step. It does not do it all. Congress must also focus in on the venereal disease problem in children. I know that Mr. Osanka told you that Connecticut has the only law in the United States which defines the presence of venereal disease in children under the age of 12 as a presumption of child neglect or abuse. That is because we have had, and I am from Connecticut, two cases of gonorrhea of the throat in children under 18 months of age and one in a child under 9 months of age.

We, as a Nation of concerned citizens, must look at what is happening to the American family, what is tearing down the values of the family and our way of life. Permitting this type of material is very important to the destruction.

This is part of the activity of organized crime. I must emphasize that. You can have many witnesses better than I telling you how it is organized crime. It is my belief that it is a function of the Federal Government to fight organized crime.

I wrote the act for Congressman Peter Peyser which established the National Center for Child Abuse and Neglect in 1973. I was outraged to hear Mr. Osanka's testimony concerning the centers taking an ad with Federal tax dollars in Mr. Flynts. Hustler magazine. This should be investigated immediately. I also know that the National Center has done nothing to fund any program to rehabilitate children who are the victims of sexual crime, particularly programs which would help investigators identify the people who are involved in moving the children across the country.

There should be a mandate from Congress to the HEW demanding that the moneys go into this kind of activity—both preventive and rehabiliative.

I am open now for questions, but finally, Mr. Conyers, Odyssey has a huge center in Detroit as you well know in which you can interview child prostitutes. A massage parlor in New York was recently closed in which a 12-year-old was working, Ms. Holtzman. This kind of use of children was easily predictable.

Long ago, the Federal Government funded magnificent work by Harlow and Prescott to study maternally and socially deprived monkeys. Their work showed that when there is no family socialization these monkeys compensated by precocious and promiscuous sexualization. That is what we are seeing. We have 2.4 million children in the care of substance-using mothers. Prostitutes average 2.8 children and they are selling their kids.

Mr. CONYERS. I know you could go on much longer than the time allotted to you, but tell me how Odyssey Institute works to prevent child abuse.

Dr. DENSEN-GERBER. We have a grant in research and demonstration from the National Institute of Drug Abuse which must end this year by regulation to study drug-related child abuse and how do you teach parenting to mothers who have not, many of them, been parented themselves. That is where this work originated.

For instance, 44 percent of the women presenting for treatment for drug abuse were cross-generational incest victims, 75 percent before they were 12, 45 percent before they were 9 and a quarter with their mothers' knowledge. There is a definite relationship between incest in the young female and subsequent antisocial behavior and acting out. Furthermore as an adult, she is expected to rear four or five children and she can't. Our parents program has shown clearly that parenting is not instinctual but a learned experience.

Mr. CONYERS. What does the Institute do?

Dr. DENSEN-GERBER. It runs 44 centers in 12 States. The Institute where I am the chief executive officer has the mandate to provide health care to the socially disadvantaged. We study the clinical materials and then attempt to find answers. We learned how and about child pornography from our Concerns of Children's Division and our medicine branch which is headed by Thomas Clark, drafted legislation in this area. We do much work at the interface of medicine and law.

Mr. CONYERS. How many young people do you think are being affected by abuse and pornography?

Dr. DENSEN-GERBER. I have counted 400 different children. I postulated that there were perhaps 2,000 involved in pornography, however, in a recent arrest in Cleveland, one photographer had 300 children in his employ. But if we include prostitution and the advertising of children for purposes of prostitution, then we have close to 1 million children sexually and commercially exploited.

Mr. CONYERS. Is that your figure or others?

Dr. DENSEN-GERBER. That figure is based pretty much on the work of Robin Lloyd in which he counted 300,000 boys. No one has bothered to count the girls because society never counts girls in the area of prostitution. Because we are probably as much heterosexual as homosexual so I matched Lloyd's figure for boys—equaling 600,000 children. Lloyd however feels the number is twice what he can statistically validate.

The Los Angeles Police Department says there are 30,000 children in Los Angeles alone who are being used sexually. The FBI reports 1 million runaways. The majority are being supported sexually; how else can these children support themselves. Funding for runaways programs is almost nonexistent, and so far our government has not wanted to examine it. Most children run away for good reasons.

Mr. **Conyers**. In other words, this problem goes farther than the abuse of children in filming and movies? Of course, I think that is where the Congress must ultimately begin to address itself. We know that there are at least 1 million runaways a year. I have been told from the Education and Labor Committee that 1 million youngsters drop out of school and some of these may be part of the million that run away, of course, but some of them are not.

So we have somewhere possibly in the neighborhood of 2 million kids who form a ready market for sexual exploitation from pornographers and their like. So that the problem, Doctor, as I am sure you agree with me, would require the Congress to begin to address such questions as the condition and nature of the juvenile detention facilities, particularly at the local level, the whole economic question of employment among young people which is at least a partial contributing factor to these being lured into the kind of activities that we are trying to prescribe by law.

Could you comment on that observation?

Dr. **Densen-Gerber**. I could not agree with you more. In 1973, I wrote the National Center on Child Abuse and Neglect Act for Congressman Peter Peyser. Sadly, this law has done almost nothing. Since I also had the good fortune to suggest the name of the director to President Ford; when faced with its failure I had to look for why. The Center has very little power within our system; it is a third echelon agency within HEW. Until here on the Hill America's children are made the Nation's first priority and until you begin to address all the problems of our children in a coordinated comprehensive way, America will not have a future.

One of the things I would like the committee to help me with concerns this letter from the office of President Carter saying that he cannot see me because I represent a special interest group, America's children. Perhaps you could arrange a meeting for me to discuss the traumas facing our children as I did with Prime Minister Fraser of Australia. I want to give Carter all this American-made pornography. I want action for myself or Odyssey. That our President would call America's children a special interest group is part and parcel of the problem. I have to tell you, children count.

Mr. **Conyers**. Are there any other members of the subcommittee that would care to interrogate the witness because we will either have to recess to answer a quorum call or we will adjourn for the day.

Mr. **Railsback**. I would like to.

Mr. **Conyers**. All right. Then I think we will have to recess and we will return in 15 minutes.

[A brief recess was taken.]

Mr. CONYERS. The subcommittee will come to order. Dr. Densen-Gerber, can you elaborate on the matter of organized crime and pornographic activity, or the evolvement of organized crime in connection with sexual exploitation of children?

Dr. DENSEN-GERBER. I have only been looking into this since January 12, and I certainly am not a law enforcement person. But it is amazing what is known, and there are several members of the press here today who have told me a great deal. It is my belief that "Kiddie Porno" was started through El West in Seattle, Wash., by a man named Tony Eboli, now dead, who headed the Genovese family for a period of time. I have been told there is a great deal of information in New York City intelligence, and a member of the police department called Francis Shini and actually one member of the press corps who is here, Mr. Chris Borgen of CBS (who has been investigating this for at least 12 years), can give you much more information than I ever could. It is not hard to know, anymore than it is hard to know about narcotics. It is my belief, as a clinician in the field, that anytime we want to stop this breaking down of our moral values we could. There is no mystery or difficulty. The only reason we don't wish to is that it is highly profitable.

Mr. CONYERS. On this subject, do you suspect that the Department of Justice is as fully advised as you are?

Dr. DENSEN-GERBER. I should hope they are better advised than I am. It would be a sad fact that since I began by chance on January 12. If I know as much as I know now, and they don't know. That would be very, very sad. My belief is they know. It has to be they know. It is not hard to find out any more than it is hard to buy these materials. There is no secret.

Mr. CONYERS. We are going to have a Department of Justice representative before us, and we hope that we will be able to find out. You know, finding out and determining what to do is frequently two different things.

Dr. DENSEN-GERBER. But as long as you and I commit to the concept that we are going to find out the truth and then do something positive rather than mentally masturbate and play word games. The fact plainly is that something has to be done to help the American family be able to rear its children in less oppressive permissiveness.

For instance recently I was asked to debate, in New York whether or not I thought it was healthy that people were now urinating in the streets, thereby signaling the end of inhibition and repression. Backed finally against the corner, I, exasperated, exclaimed that I have a right to my stockings and shoes being clean.

We must be able to know what is right and wrong and then institute action. There is nothing good about this "Kiddie Porn". There is no first amendment issue that can possibly justify telling a man to go home and have intercourse with his 9-year-old daughter. Such is not protected material.

Mr. CONYERS. Are you here in your capacity as director at the Odyssey Institute?

Dr. DENSEN-GERBER. Yes, I am.

Mr. CONYERS. And that suggests, then, that they are working in this area?

Dr. **DENSEN-GERBER.** Odyssey Institute works in the area of uncovering atrocities to children since the beginning of our Concerns for Children Division, whose major task is to obtain a million signatures from Americans everywhere to mandate that the President declare America's children the Nation's first priority and take action to establish a Cabinet post for children. Since the campaign began, we have received information on what is happening to children. I was first introduced to this material by Senator Birch Bayh, when he sent me a book by Robin Lloyd, "Boy Prostitution in America for the Love of Money."

Mr. **CONYERS.** How long has some part of the institute been working in this matter, and how large is the staffing?

Dr. **DENSEN-GERBER.** We have worked in the matter of child pornography since January 12, 1977. In September of 1976, I sent the first of the magazines to Robert Morgenthau, New York district attorney, asking him as well as Congressman duPont, now Governor of Delaware (the magazine in question had come from Delaware) to take action. Congressman duPont responded that the address was fake for Delaware, and Bob Morgenthau stated words to the effect that I should spend my time on important crimes like mugging. My belief is that the mutilation of a million children is a tremendously important crime. There was no interest then; anymore than there was an interest when Edward Mishkin, who had been first investigated by the Kefauver Commission in 1949 and had a yellow sheet this high, appeared before Judge Irving Lang on January 2, 1977, and pleaded guilty to obscenity felonies involving children. He was given 27 consecutive weekends in jail instead of the possible 7 year sentence. I suppose so as not to interfer with his work week. As long as law enforcement thinks this is not important and judges make a travesty of our system, grassroot Americans will have to join together to demand remedial action.

Mr. **CONYERS.** May I interrupt you again, and forgive my bad manners, but we are still under the pressure of time. I yield to the gentleman from Pennsylvania.

Mr. **ERTEL.** Thank you, Mr. Chairman.

Ma'am, I listened to your testimony here, and I saw you go through that litany of magazines which, as a former prosecutor, I am quite aware of. Now these television cameras have been sitting here while you went through that litany, reading the titles, going through all of that, and assuming that will show on the 6 o'clock news tonight, don't you think you have been a little counterproductive in showing all those titles and books which may appear on that press when my 4-year-old, 8-year-old, and 13-year-old watch? Wouldn't it have been easier to submit that to us so we could review it without putting it across the entire press of the United States?

Dr. **DENSEN-GERBER.** Let me answer you very strongly that I believe that the situation in this country is so terrible now and the leadership so poor that only if the American people become informed will we be able to protect our freedoms.

Mr. **ERTEL.** Are you going to inform my 8-year-old and 4-year-old and 13-year-old?

Dr. **DENSEN-GERBER.** Yes: if necessary.

Mr. **ERTEL.** I thought we were trying to prevent this.

Dr. Densen-Gerber. I hope when your children watch the news, they are equally upset by the violence, by the other kinds of things that are going on. There is almost no other way, Congressman, now, to get across to the American people the organized way our value systems are being torn down.

Mr. Ertel. We have children watching the news. They have no way of selecting on a news program, and my wife would have no way of selecting out, what you have presented here.

Dr. Densen-Gerber. So why don't you clean it up so I don't have any magazines to show? Why don't you worry less about me and more about the organized crime that is making these things?

Mr. Ertel. I have been here 4 months. I was a prosecutor and prosecuted a few of those people, so when you make those accusations, you should be a little aware of what is going on.

Second, you could have presented this to us in a written statement. We could have read it. We can read. I question whether you have to wave those in front of the press here at this hearing, and whether or not it is not counterproductive for those juveniles which we are trying to protect.

Thank you very much. I have nothing further.

Mr. Conyers. Mr. Volkmer.

Mr. Volkmer. No questions.

Mr. Conyers. Mr. Railsback.

Mr. Railsback. May I ask if you have any idea what States have enacted laws that may be directed against child exploitation?

Dr. Densen-Gerber. Yes; when we took a survey in January, the only States which had specific laws on this matter of child pornography were North Carolina, South Carolina, North Dakota, Tennessee, Texas, and Connecticut. Those were the States.

Mr. Railsback. Were any of those State laws, in your judgment, better than others or more effective to combat the child abuse exploitation you have testified about?

Dr. Densen-Gerber. Yes; actually the State law that is the model for the one that Congressman Kildee has introduced is in North Dakota. It is an excellent law. However, North Dakota does not happen to be a State that is a major producer of these materials.

Mr. Railsback. Has the law been implemented?

Dr. Densen-Gerber. Whether there has been prosecution, I don't know. On the books it stands as a thorough, well-written, and thoughtful piece of legislation.

Mr. Railsback. I wonder if you happen to be aware of a series of articles that were recently published in the Chicago Tribune under the byline, I believe, of George Bliss, who is a Pulitzer Prize-winning investigative reporter?

Dr. Densen-Gerber. No. I am not aware of them.

Mr. Railsback. I might just mention that, in my opinion, and I just did have a chance to read most of those articles, they rather vividly portray what I think is the message that you are trying to convey, maybe a little bit too sensationally, but, anyway, expressing your concern. I wonder if you happen to be aware of the work of the National Coalition for Children's Justice and familiar with Ken Whitten, a director of that organization?

Dr. **Densen-Gerber.** It is an excellent organization, but its particular focus is on the problem of incarcerated children within institutionalized settings.

Mr. **Railsback.** As I read your statement, and as I tried to hurriedly read—and I apologize for getting here late—but as I read some of the other statements, I get the feeling that there is really no organization or no governmental entity that has the slightest idea how pervasive this problem is. Is that right?

Dr. **Densen-Gerber.** That is absolutely correct.

Mr. **Railsback.** What is your Odyssey Institute doing about that, if anything, or don't you have the resources to do it?

Dr. **Densen-Gerber.** First of all, previously I didn't totally answer Congressman Conyer's question on Odyssey Institute. The Institute is totally nonfunded and is a voluntary organization looking into issues. What we hope to do, because we have 44 clinics serving 12 States, is take from our experience with patients and begin to look at causes in the society that make for the problems that these patients suffer from. In 1971, we were faced with more female addiction and therefore more pregnant addicts. By 1974, we knew that the majority of women involved in addiction had been incest victims, usually as children. From that finding, we looked at the whole issue of sexuality with children and around children.

Mr. **Railsback.** It is your belief that the only effective way to do something about this problem would be to have a rather inclusive comprehensive Federal statute rather than permit the States to enact their own laws?

Dr. **Densen-Gerber.** I am not only convinced of that; I am convinced that this hopefully, as Congressman Conyers suggested, is only the beginning of the Federal Government examining how we can provide a better soil for our children everywhere. "Kiddie Porn" is so outrageous that perhaps if we begin with this, we will be able to take a look at much of what else is wrong.

Mr. **Railsback.** Just one last question. Have you come across any allegations of governmental entities or even judges or anybody acting under governmental authority being a part of any child exploitation?

Dr. **Densen-Gerber.** Again, only by omission rather than commission; but I haven't specifically looked into that. There is one Odyssey patient, for instance, who was arrested in Chicago, at 13. She was a white child. She appeared before the judge in Chicago, your home State. Her pimp, who was a 50-year-old black man, came into the court and was able to bail her out for $50. Certainly the judge looking at the two people before him, the black elderly pimp and the white child, brought up on prostitution, would have been able to surmise something was amiss.

Mr. **Railsback.** Let me be a little more specific. I happen to think—and I have been interested for some time in juvenile delinquency, and so forth—I happen to think one of the greatest hopes that we have is to perhaps provide a good environment for delinquents or neglected children other than in some case a bad parental environment, and I have been encouraged by what is called the foster-parents program or, in some cases, a foster-grandparent program.

Are you aware there have been allegations that in some cases the so-called foster parents may be contributing to the child abuse?

Dr. **Densen-Gerber**. Yes, sadly, occasionally such is true. One should not really expect, unless there were careful monitorings and supervision of foster parents, that they should differ in any way from natural parents. The fact is——

Mr. **Railsback**. Except they are, in effect, trustees, but in some cases are even being paid to take those children, and, in my opinion, there ought to be a certain oversight exercised which I think, if it is not exercised, will doom that program, which could be a good one.

Dr. **Densen-Gerber**. Odyssey, N.H., has encouraged certification of foster parents. New Hampshire is unique in that the Governor of that State, Melden Thomson, has been a foster parent, himself. It is extremely important that many of us consider being a foster parent a special privilege, rather than something done for money. Children are a sacred trust of God, not property of parents.

There is no question that we must teach parenting. Our young people do not know how to parent. Tne situation is worse today than yesterday, and unless we do something, it will be worse tomorrow. Today, there is a crisis in the American family. Present child-rearing is not working. We can't leave it all in the present laissez-faire state.

Mr. **Railsback**. Thank you.

Mr. **Conyers**. I recognize now the gentleman from California, Mr. Dornan, not a member of the committee, but whose concern about the subject matter led to his invitation this morning.

Mr. **Dornan**. Thank you, Mr. Chairman.

Doctor, I want to afford you an opportunity here to just slightly amend one of your earlier statements so that you don't find yourself in the position of using up the remaining years of your long life defending yourself against a battery of lawyers that feed off this pornography money. Some of them are the finest lawyers in the country, but they sell themselves cheaply.

In relating the story about a niece of a former member of this Judiciary Committee, you said Larry Flynt had offered money for the raping of Mr. Charles Keating's daughter. I debated Mr. Flynt on a television show at that seminar, and I asked him specifically about his appearance on the campus of the University of Cincinnati, and I will give his version, which I think is bad enough, and I think if you amend your remarks consistent with his version, people can draw their own conclusion and you won't be liable for suit.

He said some student at the campus, according to his relating of the story, told him that he understood Miss Keating went to school there and he would offer to put into Kinky Corner in his magazine, which pays $100 for every insert and $200 if accompanied by a photograph, that if anybody would get a story on Keating's daughter, he would put it in the Kinky Corner, giving them the money. He said in no way did he think it would turn into a rape, and he expressed his sorrow.

But throwing or offering money around like that on a college campus—I think the way you phrased it, you might be in danger of being taken out of the effective field you are in, going along with what you said, that there is some danger in this area when you come forward and speak out forthrightly or with some sophistication and guard your terms, you are still in danger in this area because you are up against organized crime and the most vicious, lowly, slimy type of human being that has ever drawn the breath of day on our planet. Would you care to amend your remarks?

Dr. **Densen-Gerber.** Yes; I would. In Cincinnati I was the speaker last week, and being the mother of a 17-year-old, all I heard was the danger, and I may have overreacted or misinterpreted. I know I was profoundly affected to hear that a child of a distinguished American leader in the antipornography battle would be hurt in anyway, however, it is evident that we run very grave risks, this we must understand. I thank you for correcting my misstatement. I heard it the other way.

Mr. **Volkmer.** Will the gentleman yield for a minute? I would like to——

Mr. **Conyers.** I will recognize you.

Mr. **Volkmer.** I would like to comment on this. The way I understand what you are saying is that Mr. Flynt, his side of it, was he did make an offer to anyone if they found anything on her, and if they put it in the magazine; is that right?

Mr. **Dornan.** The Kinky Corner is probably the most depraved magazine in the business. Worship of fetal matter, animal sex, and incest are a regular feature, and to tell young kids at a fraternity, I believe it was Sigma Alpha Epsilon, to tell them he would get them into that column if they would get him something on the daughter of an outstanding American citizen, whose brother is now the publisher of the Cincinnati Enquirer and esteemed Member of Congress for a decade, to make that kind of offer on a college campus is the most ugly, irresponsible conduct I have ever heard.

Mr. **Volkmer.** He admits that was done?

Mr. **Dornan.** Yes; and told me one of the students came up to him and offered the information that he had dated Miss Keating and that is when he offered the Kinky Corner suggestion. She was raped within days at high noon on a major campus—the younger Keating daughter, in high school, was tracked by two men for 2 days preceding that—and dragged in to the woods adjoining the campus, literally 2 or 3 minutes after noon, and out of respect for the Keating family, there hasn't been too much publicity on this.

The daughter is in Europe now. It cost her a semester out of schooling, and I think it is—when I related this to my own daughters, I have three of them and two sons, my daughters said to me, "Are we next, dad?" because I have been a national spokesman for 3½ years for Citizens for Decency Through Law, only resigning on December 31 after election to Congress.

It became an issue during my campaign by opponents that this was a laissez-faire, wild, do-your-own-thing, if-it-feels-good-do-it, anything-goes society, and I don't think it is, and I think my winning the most expensive race in the Nation proved that.

I wish there was some way we could have the Keating story told without further damage to the daughter, and I hope——

Dr. **Densen-Gerber.** They did announce it at the convention. It was a regular convention statement. I received in the mail a very interesting letter last week. It offered me $100 to $1,000 reward if I could identify celebrities in the Kinky films they had for sale. These were people who range from the White House down.

I interpreted this as saying to me, you are next, and I assume that I shall shortly be seen in a film with a horse or film with some such other activity. That is another way they blackmail people to stay out of this field—threatening to superimpose your face, your body, or whatever it is, in these kinds of films and distribute them.

Mr. **Dornan**. Mr. Flynt, on the "Tomorrow Show" on NBC, offered money for a nude picture of the First Lady of our land. He has published a 3 x 5-foot blow-up of a nude picture of a former first lady, Jacqueline Kennedy Onassis. It was taken by an underwater scuba diver off the Island of Skorpios, and yet when he ran a full-page ad in the New York Times alining himself, this is Mr. Flynt, with dissidents like Vladimir Bukovsky and Alexander Solzhenitsyn, that ad was signed by some of the prominent literary people of our time, and it just shows you how outrageously sick this problem is.

Now we are down to discussing, are we going to allow, as Mr. Rembar said, the prior witness, 12- and 13-year-old girls to be used in porno films but boys until 14? That is sick, Mr. Rembar, and I really am sorry to hear that kind of testimony. A child is a child, and the scarring of their minds that take place with this type of pornography has been—I have heard you speak before, Doctor—described as tantamount to murdering them. They need psychiatric care for the rest of their life.

Mr. **Conyers**. Will the gentleman conclude his statement?

Mr. **Dornan**. Yes; and to suggest that a heroin trafficker or distributor should be prosecuted, but in this area you are going to use the first amendment to color it so the distributor is free and clear—as Mr. Stanley Fleshman suggested on "60 Minutes" the other night, only the man who makes the film is guilty—that is also sick. Anybody who traffics in this evil should be put in prison—heroin pusher, lab worker, grower, or distributor.

Thank you, Mr. Chairman.

Mr. **Conyers**. I will give a lecture on audience manners before the subcommittee the next time it meets.

At the present moment, the subcommittee stands in adjournment.

[Whereupon, at 12:42 p.m., the subcommittee adjourned, subject to the call of the Chair.]

SEXUAL EXPLOITATION OF CHILDREN

WEDNESDAY, MAY 25, 1977

House of Representatives
Subcommittee on Crime
of the Committee on the Judiciary
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:10 a.m., in room 2237, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the subcommittee] presiding.

Present: Representatives Conyers, Holtzman, Gudger, Volkmer, Ertel, Ashbrook, and Railsback.

Also present: Hon. Robert McClory, a Representative in Congress from the State of Illinois.

Staff present: Hayden Gregory and Leslie E. Freed, counsel; Gene Gleason, investigator; Thomas N. Boyd, associate counsel; and Dorothy Wadley and Martha Brown, assistants.

Mr. Conyers. Good morning.

The subcommitte will come to order and the hearings of the Subcommittee on Crime on the sexual exploitation of children will continue.

In the course of these hearings thus far we have heard about the numerous magazines with pictures in each issue that sexually exploit children. Millions of dollars worth of the films each year depict boys and girls of very young ages in sex acts. There is obviously a large market for the literature, and photographs of children especially abused and exploited.

All of this commerce in child pornography involves the sexual abuse of children based on the norms of any civilized society.

Unfortunately, we do not have any good data on the scope of the problem, but the very existence and commercialization of child sexual abuse is repugant and needs to be prevented and stopped. Most children grow up without any awareness or involvement in these activities. The relatively small minority of children subjected to sexual abuse from any source, including pornography purposes and prostitution, need the protection of effective laws and law enforcement.

The question that arises in this subcommittee is what kinds of laws and what kinds of law enforcement?

Many of these children at one time or another have been incarcerated in detention centers, in training schools, in homes and institutions for dependent and neglected children and foster care homes. They are the victims of family breakdown and the lack of adequate child care services and facilities. The mistreatment and neglect of these children is yet another dimension of the problem that we expect these hearings will also highlight.

I am very pleased to introduce our next witness who has been working with this committee, the ranking minority member of the House Judiciary Committee, a member who has served with some distinction on this particular subcommittee, and who has been extremely effective in the deliberation of many of the problems that have come before the House Judiciary in the years I have been privileged to serve on the committee.

I refer to none other than my friend and colleague from Illinois, the Honorable Robert McClory, to whom I will yield at this point.

TESTIMONY OF HON. ROBERT McCLORY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. McClory. Thank you, Mr. Chairman and members of the subcommittee.

I appreciate the opportunity to appear here this morning.

Very briefly, I want to commend you, Mr. Chairman and members of your subcommittee, for undertaking these hearings. They are needed and the American people must be made aware of the sexual exploitation of our children.

Witnesses at your first hearing Monday discussed the horrifying dimensions of these exploitations, a lurking and insidious threat with the potential to touch us all through our own families and those of relatives and friends, and to destroy still unknown numbers of children.

As you well put it on Monday, Mr. Chairman, the connection between the distribution of films and magazines contributes dangerously to that exploitation and, to quote you: "Widens the vicious circle of physical and photographic abuse."

The focus of the media on this helps us all decide if new Federal laws can help stop these abuses. With many other Members, I am a co-sponsor of a bill sponsored by our colleague from New York, Mr. John Murphy. It is virtually the same as another sponsored by our colleague from Michigan, Mr. Dale Kildee, and I know you are considering both here.

Dr. Frank Osanka of Lewis College in Illinois, one of your Monday witnesses, introduced into the hearing record clippings of a series on child pornography and child prostitution which ran recently in the Chicago Tribune.

Mr. Chairman, the reason for my appearing here this morning is that you have asked the Chicago Tribune reporters responsible for this series to appear here this morning.

Mr. Chairman, I am please that you have asked the Chicago Tribune reporters responsible for this series to appear here this morning.

Through their research and their skillful and tireless investigative reporting they have been able to expose a purgatory of perversion, the sexual subverting of children.

Miss Michael Sneed and Mr. George Bliss, who is a three-time winner of the Pulitzer Prize, spent 3 months investigating the problem.

Mr. Ray Moseley, who also assisted in the investigation, wrote the series. All three came from Chicago to be here today.

Mr. Chairman, I fully agree with a point you made Monday. You said that initially this subcommittee—and ultimately the Congress—must decide whether new Federal laws would help stop this abuse or whether better enforcement of existing laws, both Federal and State, is the answer.

I am confident that these three witnesses will help you reach the right, just, and necessary conclusion in behalf of the children of America and of all our citizens.

I appreciate this brief appearance. I know you have Sgt. Lloyd Martin who is going to appear as a witness next and I know he is going to contribute substantially to the hearing here this morning.

I appreciate this opportunity to appear briefly, and in a sense to introduce to you these highly respected journalists who are going to testify later this morning.

Mr. **CONYERS.** Thank you, Mr. McClory. We have been working, as you know, through your helpfulness, with these two reporters from the Chicago Tribune and we welcome their presence here formally before the committee, and I would like to invite you, if your time permits, to join the subcommittee as we proceed through our hearings and at whatever point you can bring yourself to be with us throughout not only today's hearing but any other day, obviously you are welcome.

Mr. **MCCLORY.** Thank you very much, Mr. Chairman.

Mr. **CONYERS.** We now turn to the police officer who has initiated a sexual exploitation unit within the Los Angeles Police Department, Investigator Lloyd H. Martin, who has been with the Los Angeles Police Department for 12 years, 6 of which have been assigned to the Pornography Unit, Administrative Vice Division, Los Angeles Police Department.

We welcome your appearance here in Washington before this committee, and we appreciate that you have prepared a statement in advance which has been distributed to the members.

Without objection it will be incorporated into the record at this point, and you may summarize from it and then we will engage in some questions and answers afterward.

Welcome to the subcommittee.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF INVESTIGATOR LLOYD H. MARTIN, LOS ANGELES POLICE DEPARTMENT

WHO ARE THE EXPLOITED CHILDREN?

The Los Angeles Police Department conservatively estimates that 30,000 children are sexually exploited in the Los Angeles area each year. Dr. Judianne Densen-Gerber, a nationally known authority on child abuse, has estimated that as many as 120,000 children in the New York metropolitan area are involved in some type of sexual activity for money.

A child who has been sexually abused will frequently turn to prostitution, pornography, narcotics, or other criminal activity, or will be encouraged to engage in this activity by an abusing adult after having outlived his novelty as a sexual partner. A 12-year-old boy in Los Angeles can earn $1000 per day. Most receive much less, and a pimp will retain 60 percent of what is earned.

The most difficult concept for most people to understand and accept is that, very often, these children are consenting partners in the sexual activity. In some cases they initiate the sexual activity with direct propositions or with seductive behavior. This does not fit the image of an unsuspecting child being lured into a stranger's car with a candy bar and a promise of a trip to the beach. On the contrary, the young victims we are concerned with are usually runaways, reasonably "street-wise", emotionally troubled children who trade themselves for money or for what they interpret as affection. They may appear to be "hustlers", but they are in fact children and victims in the truest sense of the word.

CHILD EXPLOITATION IS A NATIONWIDE PROBLEM

In 1972 a poor-quality pamphlet was published in Hollywood, California, entitled, "Where the Young Ones Are". The pamphlet listed 378 places in 59 cities of 34 states where, ". . . the young can be found". Listed were such places as bowling alleys, beaches, arcades, parks and the like. Incredibly, the pamphlet reportedly sold 70,000 copies at $5 per copy.

In New Orleans, a sexual abuse ring was discovered with adult participants and correspondents located in all parts of this country and in several foreign countries. Evidence seized in the investigation included correspondence from approximately 50 adult males living in the Southern California area. That investigation also disclosed a widespread infiltration of adult suspects into all types of national youth groups and youth-oriented organizations.

In Chicago, the investigation of a nationwide prostitution ring involving juveniles disclosed that some of the youthful victims had been recruited in Southern California. Other investigations also indicate there is nationwide mobility, interaction and communication among adults involved in child exploitation. Suspects advertise and establish communication through various publications.

In Los Angeles, juveniles are approached by adults for sexual purposes at amusement arcades, teenage discotheques and other locations where minors congregate. Local and out-of-state runaways flock to widely known locations knowing they can find shelter and money.

Sexually explicit movies and photographs involving exploited juveniles are made in Los Angeles and distributed throughout the world. Thousands of magazines and films are available locally for distribution. Some involve children in sexually explicit acts, while others depict simulated sexual acts and/or obscene nudity.

THE USE OF PORNOGRAPHY BY THE CHICKENHAWK AND THE CHILD MOLESTER

The use of pornographic material by the chickenhawks and child molesters is extensive, as evidenced by the ever-increasing volume of such material seized in investigations of sexual exploitation. Corroborating this physical evidence are the statements of the victims who in practically all cases were exposed to pornographic literature.

Since its inception on October 10, 1976, through May 20, 1977, the Sexually Exploited Child Unit conducted over 50 investigations which included interviewing over 150 victims and suspects. In all of these cases, pornographic literature has been abundantly present. It can be concluded that pornography in many forms is extensively used by those who engage in sexual crimes against children.

Pornography serves as a method by which the suspect can turn a normal conversation with a juvenile toward a sexual theme. As an example, if a suspect picks up a victim in a vehicle, the suspect may leave a pornographic magazine on the vehicle seat solely to stimulate conversation about sex.

Pornography is also frequently used to sexually stimulate both the suspect and victim as well as to break down inhibitions a victim may have regarding the acts that he or she is expected to commit. The nature of the literature used will correspond to the suspect's sexual inclinations. If the victim displays reluctance to engage in such conduct, the suspect will use the literature as an element of persuasion. He will show the victim the publication and present the argument that if the young boy in the magazine is willing to remove his clothing or orally copulate the penis of another boy, why should not the victim be willing to also do so? If the suspect observes that the victim is not responsive to homosexual literature, he may also use literature depicting young girls. Viewing the young girls may cause the victim to achieve an erection. The chickenhawk will then offer to copulate the victim to fulfill the victim's growing need for sexual gratification. Like the chickenhawk, the child molester directs the victim's attention to the fact that the young girl in the magazine is posing nude and suggests that it is all right for the victim to act similarly.

PHOTOGRAPHS AS USED BY THE CHILD MOLESTER AND CHICKENHAWK

Often, personal photographs are taken by or of the suspect which are not generally intended for commercial sale or profit, but rather for the private use and stimulation of the suspect. The act of taking the photographs may be so stimulating to the suspect that it causes him to reach a climax. In all cases investigated by SEC involving the taking of photographs the suspect has molested the victim either before, during, or after the process. In a few cases photographs

have been used to threaten exposure of victims who have indicated they may leave the suspect or go to the authorities for help.

PROFESSIONALLY PRODUCED PORNOGRAPHIC PUBLICATIONS

The production of professional pornographic publications depicting youths exposes a minor to hazards as great as those presented by the chickenhawk or child molester who "keeps" a minor for his personal gratification. In almost all cases, the professional photographer of such publications will himself be a child molester or chickenhawk.

Models for pornographic publications are obtained in various ways. The runaway juvenile, alone and without support in a strange city, is a particularly attractive target for these publications. Ads soliciting "kids who have just hit town" appear frequently in underground newspapers. As in the case of the private chickenhawk or child molesting photographer, the professional pornographic photographer will probably molest his victim before, during or after the photographic process. In addition to sexual gratification, the photographer will reap a handsome profit. A pornographic publication that retails for between $7.50 and $12.50 per copy costs between 35 and 50 cents to produce.

RECOMMENDATIONS FOR ADDITIONAL FEDERAL REGULATORY ACTION

Male juveniles state they regularly travel from Los Angeles, California to Las Vegas, Nevada with their adult companions for sexual purposes. There is no equivalent of the Mann Act to prohibit this interstate transportation of males for sexual purposes.

SEXUAL EXPLOITATION OF CHILDREN—THE INVESTIGATIONS CONTINUE

When investigators attempt to define the nature and scope of the sexual exploitation of children in this country, they are frustrated by the lack of research and prior investigation in this area. They are operating on the "tip of the iceberg" premise because as the extent of the problem unfolds, they are constantly finding themselves at junctures that present new opportunities for investigation. Of this they are certain: the problem of the sexual exploitation of children manifests itself in various forms and is national in scope.

The material in this handout is intended to illustrate the nature of the problem and to give some indication of its scope. Within the Los Angeles Police Department's Juvenile Division, the Sexually Exploited Child (SEC) Unit daily investigates the problem. Their investigations, formed the basis for the information in this handout. As the investigations continue it becomes clear that the "iceberg" is a massive one, indeed.

TESTIMONY OF INVESTIGATOR LLOYD H. MARTIN, LOS ANGELES POLICE DEPARTMENT, SEXUALLY EXPLOITED CHILD UNIT

Mr. MARTIN. Mr. Chairman and members of the subcommittee, I would like to thank you for inviting me here, because I do believe that the sexual exploitation of children in the Nation is one of the biggest problems that faces everyone.

According to Senator Birch Bayh's Subcommittee on Juvenile Delinquency, he makes the statement, "We have 1 million runaways annually in the Nation."

I want to ask a question: How do these runaways survive if they can't get jobs, what do they do to obtain the necessities of life? I am going to tell you.

It's either pull up their dress or pull down their pants. This is the way they obtain money, food, clothing and shelter, basic things that they need.

In the city of Los Angeles, it was estimated, not by the Los Angeles Police Department but people in the street that we have 30,000 sexually exploited children in that city. These 30,000 children come from broken homes, in most cases, and a lot are runaways.

I want to talk about two individuals this morning. I want to talk about the child molester and the chickenhawk. I am sure when I say the words "child molester" most of you in this room, the immediate thing that comes to your attention is the dirty old man and the little girl. If I say chickenhawk, most of you would say, that's a bird that flies around in the sky over farms.

The correct interpretation in sexual exploitation of children of the chickenhawk is an adult male who preys on young boys.

Where do you find a child molester and a chickenhawk? You find these adults in any location where juveniles congregate, in our case, parks, amusement centers, arcades, the beach, et cetera.

In 1972, a Los Angeles resident put out a book called, "Where the Young Ones Are," simply a blue bound book, and it sold for $5 and reportedly sold 70,000 copies.

On page 9 of the book—in the District of Columbia, it's at Lafayette Chicken Hut, Northwest; Arcadia, Springfield; Arcadia, Northwest; College Park; Roman Billiard; Rock 'N Que, Rockville; Town Center; Barneys; Lums Pond, and Elsemere—these are the places for the District of Columbia where the young ones are.

It's not uncommon in Los Angeles to go to the bus station and see a runaway boy get off the bus with a suitcase in his hand and look up and say, "My gosh, I'm in Los Angeles." It is also not uncommon to see four or five adults race to meet this young boy and offer him the comforts of home and shelter.

What are the ways children are sexually exploited? By the child molester and chickenhawk, through prostitution, through model agents, porno producers, and distributors. In the prostitution area a 12-year old boy in the city of Los Angeles, with a proper pimp, can earn $1,000 a day.

Mr. **Conyers.** Are many of them doing it?

Mr. **Martin.** No, not many, but that is the potential that he would turn five tricks in that particular day's time and could earn his thousand. The pimp would retain approximately 60 percent of that money and would be smart enough to open a bank account for this young boy and keep him going.

We have a similar case in Los Angeles that I investigated that involved a 45-year-old man and a young boy. The young boy was from Colorado. Since that boy was 9 years old, he was leased on the weekends by his parents to this man, and after approximately 2 years the man then offered the family a motel to operate in Texas that he owned in exchange for the boy.

Mr. **Conyers.** The family was clearly, the parents were clearly aware of what was going on?

Mr. **Martin.** Absolutely. After about three or four weekends of the man taking the boy on campaign trips, they started charging this man to take this boy out.

Late last year this man, who owned a motel in Texas, offered this couple the motel in exchange for the boy for them to operate the motel. The family went to Texas and after approximately 2 weeks they decided they didn't really want to operate the motel, they wanted money.

The family went back to Colorado. The man followed, and a sum of $3,000 was paid for this boy by this man, brought the boy into the city of Los Angeles and also took the boy to Hawaii, Florida, and other amusement parts.

I would also like to tell the committee about an 8-year-old boy I know in Venice. This 8-year-old boy is a blond, nice tan, and wears a skimpy bathing suit. Keeping in mind I told you the chickenhawk and child molester goes where juveniles congregate, it's not uncommon to see many of these individuals at the beach areas. They will take places on a bench and watch the young boys and young girls. This particular 8-year-old boy walks along the beach, there is eye contact made between he and an adult sitting on the beach. The 8-year-old boy walks up to the man and he says, "Say, mister, can you tell me where the bathroom is?" Of course, the man says, sure, son, it's right over there. The boy says, "Would you take me, mister?" "Well, certainly." He stands up, the 8-year-old boy reaches up and grabs his hand, and they walk to the bathroom. As soon as they get inside of the door of the bathroom the 8-year-old looks up at the man and says, "It's $10 and you got 10 minutes."

Another form of sexual exploitation is the model agent. In a particular case there is a young girl that appeared in True magazine as a center fold, she appeared in a book called, "Desire," and she also appeared in a book called, "Little Girls." The statement made by this young girl and the photographs taken included explicit sex, simulated sex and pretty girl type photographs. The only problem with this was that the girl depicted in the April 1976 edition of True magazine is a 14-year-old, a runaway from Georgia, and the real sexual exploitation of her; as she appears in three different magazines.

We also have a society based in the Los Angeles area known as the Rene Guyon society. This society boasts of having 5,000 members nationwide. Their slogan is simply "Sex before eight or then it's too late."

Another form of the sexual exploitation of children is, of course, pornography, and it is not a major part, but a part of sexual exploitation. Pornography in general is a multibillion dollar business. Child pornography is a multimillion dollar business.

Approximately 7 percent of the pornography market is made up of child pornography. This includes children under the age of 14 years. Somewhere between 5 and 10 percent of the pornography market involves juveniles under the age of 18 years. An adult bookstore owner in Los Angeles recently told me within the last year and a half 80 percent of his customers wanted chicken material. That is material depicting boys and/or girls under the age of 18.

Child pornography is one of the biggest money-making industries there is for the amount of money put into it.

For example, a book I brought simply entitled "Lollitots" distributed in Los Angeles sells for $7.50.

Mr. CONYERS. Is that the leading magazine in this kind of material that is circulating nationally?

Mr. MARTIN. This is one of the major distributors and this is what he would term his front line products or one of his front line products. I don't think it is the major magazine, but it is, of course, one of them. This merely just depicts what I would entitle obscene nudity. There is no sexual contact, just the spreading of the legs as far as they will possibly go with the focus on the genital area of the females depicted.

I also brought just a film box of Lolita movies. It's a series of movies, through, mail orders, it would sell for $50. Through an adult book store in Los Angeles it would cost you somewhere around $30, and I think due to the public awareness of what is going on, the prices of child pornography is going to skyrocket. This film will probably run as much as $80 in the very near future. This $7.50 magazine is going to cost you $10 or $12.

Mr. CONYERS. Can you hit highlights of your testimony? We want to get in so many questions about how the police department operates in this area, and what the problems in law enforcement are.

Mr. MARTIN. I think the main problem of law enforcement—I wanted to show you a couple more things, if I could, before I get into that, if possible.

Mr. CONYERS. We are trying to discourage witnesses from showing magazines, because if we do a lot of that we can show all of the magazines on TV that are being published, and we don't want to aid in the distribution overly much. We are familiar with it. We have had a lot of these magazines before the committee already.

Mr. MARTIN. You are familiar with the "Broad Street Journal?"

Mr. CONYERS. Not particularly.

Mr. MARTIN. The reason I wanted to bring this to your attention is because this is the way the organization of child molesters and chickenhawks are organized, simply an ad listing service coming out of Colorado. I want to read you two ads that appeared in it to show you how a runaway exists, or what causes one to run away.

The first ad says, "Gay white male, 39, sincere behavior, wants person 6 to 13 who needs a home and someone to care and love him as friend, father," and gives name and address.

The second has, "Models, 11 and 15 in Chicago area needed for private collection, will pay an hourly wage." This would be similar to how a child in Chicago would find the necessities of life.

I also wanted to bring to your attention another publication called, "The Better Life Monthly." The reason I wanted to bring it to your attention is because it contains an editorial which is entitled, "Don't Rock the Boat," and it goes on to say, this is a boy love type publication, strictly for boy love, and in this editorial he says, "Yes; let's do rock the boat, gently, knowingly, and cautiously. Society will know that we exist, and intend to continue to exist, but most importantly, we will know we exist, we will know we are alive and seeking those rights we know to be ours. Rock the boat or sit sadly on the dock: The choice is yours."

I wanted to bring this to the attention of the subcommittee because it shows that the people that are interested in the sexual exploitation of children are doing something about it. They are out of the closet, and they are actually doing something to exploit children.

I also want to say that the victims, when you talk about publication of magazines or films, I don't see magazines and books. I see children similar to yours and mine, and the victims of this sexual exploitation are children.

Most of my investigations, the victims I have talked to, want out of their situation. They want out, and, in fact, I had a 15-year-old boy that cried. He called me once a week and said thank you very much for getting me out of my situation, I am back home with Mom, somebody who loves me.

To me, a crime against a child has no equal. It's worse than a homicide. A homicide is terrible, but it's over with very shortly. The victim of sexual exploitation has to live the rest of his or her life with those memories of what pornography and sexual deviation brings upon them.

I think it's very important that everyone concerned use all of the resources that we have to pursue the adults who prey on our children. From a law enforcement standpoint, we need laws, better laws than what we have to handle the situation, but I think the main problem of what we have to look at is not the purveyor of this material but the child.

This is what our country is based on; this is what we all live for, our children, and they are the ones who are mostly affected by sexual exploitation we now have in this country.

Mr. Conyers. Officer Martin, can I ask you how the sexually exploited child unit got started in Los Angeles Police Department and when?

Mr. Martin. It got started in my garage, sir, in 1973 while assigned to the pornography detail administrative vice; I worked a case or got involved in several cases involved in sexual exploitation of children and after about a year, a little over a year, because I was assigned to a vice detail, it turned out this was supposed to be a juvenile type operation, and the investigation stopped. I pondered over this for about 2 years, seeing the influx of children being exploited, and I made a large book that I presented to the Los Angeles Police Department of what the real problem was in sexual exploitation of children and it got started in October 1976.

Mr. Conyers. How many officers are in this unit and what do they do?

Mr. Martin. At the present time there are seven, including myself. The only way law enforcement can combat this is to go out and seek the victim. The victim of sexual exploitation does not complain. In many cases they are runaways. A runaway does not complain. You have to go out after the victims, the same as you do a dope dealer. You have to seek him or her out.

Mr. Conyers. So let's describe a day in the life of the officer in the sexually exploited child unit.

Mr. Martin. Without having any knowledge from any place in Washington today, for example, I could go to a location where children congregate and from there I would see what I would term the sad, a sexual abnormal deviate, pick up a child, and this is the way the investigation would start, and surveillance of him, where he goes. Possibly you can tell from looking at the victim if an adult has picked him up before, or her up before. It's eye contact, the meeting. It would be a matter of taking the victim into custody, into the station and talking to him or her.

Mr. Conyers. Let's establish this: Now, it's pretty clear from the law enforcement point of view that we know that in areas of each city that this kind of activity goes on. I mean, it's published.

Mr. Martin. I don't think so, sir. I don't think there is any other law enforcement agency in the Nation, with the exception of maybe one or two assigned to what is known as a juvenile unit, that work this particular problem.

Mr. Conyers. Don't you think that the police in every major city know the areas in which molesters or abusers of children are picking them up? I mean, there are common facilities in every place, there are certain bus stops, there are certain parks, parts of town even that would have to be known as common knowledge to the police officer what was in the area, if for no other reason, even if there were no child unit such as the one in your police department.

Mr. MARTIN. That's probably true. They do know where some of these locations are.

Mr. CONYERS. Of course. They are published also. There is a 70,000 sale of the magazine that tells anybody who wants to know where they are, right.

Mr. MARTIN. That is correct.

Mr. CONYERS. We are not saying that is the exclusive, those are exclusive locations, but there are certain general areas that are quickly identified.

The problem that would seem to arise is how do you interdict photographers and people that are taking movies in terms of effecting an arrest? Has that ever happened in your unit?

Mr. MARTIN. Yes; it has. In fact, in almost all of the cases that I have worked, the suspect has photographed the victim. Most of them don't reach national distribution through one of these magazines, but they actually photograph their victim and at a later time they either show it to someone else or satisfy themselves sexually by using these simple photographs.

Mr. CONYERS. Does the youngster become witness in the case, and is he competent and willing to testify against the film maker or the photographer?

Mr. MARTIN. In most cases, yes.

Mr. CONYERS. We have had some evidence that goes to the contrary. That is to say, that sometimes the young people don't want to, because of the relationship they imagine had existed, don't want to testify and don't want to turn in the adult.

Mr. MARTIN. That is true in some cases.

Mr. CONYERS. Have you seen that happen?

Mr. MARTIN. Yes, sir, and in fact, the child molester or chickenhawk is usually the victim's best friend.

Mr. CONYERS. They are prosecuted under State law, is that correct?

Mr. MARTIN. That is correct.

Mr. CONYERS. Do you have any problems with the prosecution when you bring in a case like this? What happens there? Is it easily made or is it difficult, because that brings us to the focus of these hearings. Do we need a Federal law?

Mr. MARTIN. In my opinion, we do need a Federal law, absolutely.

Mr. CONYERS. Before you give me your conclusion, tell me what is going wrong, if anything, in terms of the State prosecution.

Mr. MARTIN. The main problem that I have in Los Angeles is the identification of the victim. For magazines, the films or photographs that depict the victim, is the identification of this victim, and the way in Los Angeles it would be better for me to operate and protect the children would be if the distributor had to label his product, who it is distributed by, and to also know who the producer is and keep records of it, and also know who the victim is, to keep records of who the children are, because my main objective in Los Angeles is strictly the children, and I think that is what we should all be looking at.

Mr. CONYERS. My final question is, are we fighting a losing battle?

Mr. MARTIN. Yes, sir, because these victims are willing. They don't come forward, and to locate a victim is one of the hardest jobs there is.

Mr. **Conyers**. I recognize the gentlelady from New York, Ms. Holtzman.

Ms. **Holtzman**. Thank you, Mr. Chairman.

Can you give me some more details about the commercial exploitation of these young people in films and photography? Are there places in Los Angeles now which produce these books or these films that you have mentioned in your testimony?

Mr. **Martin**. Yes, ma'am.

Ms. **Holtzman**. What power do you have to prevent their distribution, their publication, or their sale?

Mr. **Martin**. The only thing we have right now in Los Angeles would simply be the obscenity laws that would govern the distribution of those particular films, magazines or whatever. Obscenity to me in this particular issue is really not an issue. Sexual exploitation and child abuse to me, is the issue.

Ms. **Holtzman**. I understand, but I am trying to get at the present tools you have to deal with this problem. Has there been a book publisher in Los Angeles County against whom your unit has taken action?

Mr. **Martin**. Yes, ma'am.

Ms. **Holtzman**. What laws did you use to act against this book publisher?

Mr. **Martin**. Simply the obscenity laws.

Ms. **Holtzman**. Was a conviction obtained?

Mr. **Martin**. The prosecution is pending at the present time.

Ms. **Holtzman**. Are there any child abuse laws in California? Is it a crime to molest a child sexually?

Mr. **Martin**. Yes, ma'am. Section 288 of the Penal Code is child molesting.

Ms. **Holtzman**. Were these statutes used with respect to the book publisher?

Mr. **Martin**. No, ma'am.

Ms. **Holtzman**. Are those statutes available in cases where youngsters are commercially exploited in the production of films and books?

Mr. **Martin**. Yes; against the producer, because in most cases the producer of this type of material is he himself, the child molester, or the chickenhawk, and almost all victims you see depicted in commercial material have been sexually molested. So I would, therefore, combat that in going after the producer, but that does not cover the distributor.

Ms. **Holtzman**. Have producers been prosecuted under these child abuse statutes?

Mr. **Martin**. Yes; they have.

Ms. **Holtzman**. Do you think the present laws in California with respect to prosecuting the producers of these films are adequate?

Mr. **Martin**. No; I don't. I don't think they are adequate from the standpoint I find very few laws directed to who distributes, who produces, and who the kids are, and I would be able to obtain with much greater success and get the children out of their situations if I knew who the children were.

Ms. **Holtzman**. You say the distributors would be immune from prosecution under general statutes?

Mr. MARTIN. Under child molest, yes.

Ms. HOLTZMAN. What statutes do you have to prosecute the distributors?

Mr. MARTIN. Obscenity.

Ms. HOLTZMAN. Have you prosecuted distributors under obscenity laws?

Mr. MARTIN. Yes; I have worked pornography for 5½ years. I have worked many distributor cases.

Ms. HOLTZMAN. Have convictions been obtained in those cases?

Mr. MARTIN. In some yes, and some no. Are you asking me about all pornography or asking me about child molesting?

Ms. HOLTZMAN. I am limiting my questions to areas in which the films or books involved the sexual exploitation of children.

Mr. MARTIN. The one particular case I worked was Guy Strait which started in Los Angeles. In 1973 he was a producer and distributor of child pornography, and he was prosecuted under the child molest section He jumped bond and I think he is now in jail in Illinois for the same thing.

Ms. HOLTZMAN. What legislative changes or action are you asking Congress for?

Mr. MARTIN. I think it would be beneficial to law enforcement if we knew who the distributor was, the film, magazines and books had to be labeled.

Ms. HOLTZMAN. Labeled how?

Mr. MARTIN. Distributed by John Jones, 141 East First Street, Manhatten Beach, Calif., just a simple sticker required upon the film or book or magazine as to who the distributor is, and also to identify that the distributor has to keep records of who the producer is and of the models depicted in his film, book or magazine, and that these records be available to law enforcement.

It would be a crime for them not to keep these records.

Ms. HOLTZMAN. Do you suggest a change in the Mann Act as well?

Mr. MARTIN. Definitely. I think we are all well ware that the Mann Act only covers females, and I think that has been outdated for a long time, because there are as many males that go across State lines for sexual purposes as there are females.

Ms. HOLTZMAN. Thank you very much. I have no further questions.

Mr. CONYERS. I recognize the gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. I want to thank the chairman.

I wonder if you happen to know by what authority the Federal officials are involved and cooperate with local police departments. In other words, what gives them the right, and I would say duty, to cooperate with local officials?

Mr. MARTIN. I am currently right now working with postal and the FBI on a child pornography case out of Washington, D.C.

Mr. RAILSBACK. What I am really wondering is by what authority are they doing that now? In other words, why do we have to expand?

Mr. MARTIN. The only authority I know of is they are going on the obscenity statutes. I don't know what title, title 18 or whatever, I don't know, but it's under the obscenity statutes.

Mr. RAILSBACK. That is certainly true with respect to the postal authorities. I am just wondering myself what really gives the Department of Justice their right? It may be title 18, section 1305.

Let me ask you this: Whatever resulted from your investigation of the producer of the pamphlets that I think was entitled: Where the Children are Located, that in your testimony you indicate that there were something like 70,000 pamphlets distributed?

Mr. MARTIN. It is reported there were that many distributed. There is no violation of the law, to my knowledge, of that particular magazine, none whatsoever.

Mr. RAILSBACK. Is that right?

Mr. MARTIN. It's just simply typewritten pages containing addresses, locations, and phone numbers. There is nothing restrictive of that and there is nothing restrictive of Broad Street Journal, for example. They are open to place ads.

Mr. RAILSBACK. Is it your belief that even the children that are willingly participating, that they are, in effect, victims as well as those that are abused?

Mr. MARTIN. Absolutely, sir, absolutely.

Mr. RAILSBACK. Why is that?

Mr. MARTIN. The victim, there are two key things that cause a child to be sexually exploited or sexually molested, and those two things are attention and affection. This is what causes them to be in the situation they are in, because we all need attention and affection, you and I and everyone else here, and they weren't receiving this. The child then looks for this and there are adults out there who give this, and in return, he gives himself up or herself up because of this attention and affection.

Mr. RAILSBACK. What has been your experience as far as those children with whom you have worked? Have they for the most part indicated any apprehension about acts of retribution that may be performed against them, or have they generally been cooperative? Has the Los Angeles Police Department provided protection for them or how does that work?

Mr. MARTIN. In most cases the victims are cooperative with the police department. As I said before, they are very glad to get out of the situation. These kids are looking for a way out, and to a runaway or someone else, a police department doesn't seem like the way out, but after talking to the children 3 or 4 or 5 hours, they find that it is. They very much want to get out.

Mr. RAILSBACK. Is it further your feeling that some kind of a Federal law is absolutely necessary to help mount a massive effort to deal with a problem which really extends across jurisdictional boundaries as well as State boundaries?

Mr. MARTIN. This is a worldwide problem, sir, and especially it's a nationwide problem, and I think law enforcement, local, State, and Federal have got to forget about all of the jealousies involved in law enforcement and work together to protect our children.

Mr. RAILSBACK. Do you have any idea how extensive the problem is, and for instance, do you know how many other police departments have separate divisions dealing with the problem?

Mr. MARTIN. To my knowledge, there is no other police department other than the Los Angeles Police Department dealing with this problem specifically. How extensive it is no one knows, but I will tell you from my experience that it is gigantic. If we have a million runaways annually, nationwide, just talking about runaways, not talking about anything else, then let's say that 400,000 are able to find the "good guys." You tell me how the other 600,000 exist?

Mr. Railsback. I must say I was very, very much impressed with that part of your testimony which called to our attention the difficulty in really getting to the heart of the problem, because the children are not about to seek your help and you actually have to go out and try to investigate and determine the extent of the problem yourself, and I think it poses an extremely difficult problem for the American public to get a handle on just how extensive it is.

I just want to commend you for the work that you have done, and indicate my hope that we can be responsive to what I think is a very, very serious problem.

Mr. Martin. Thank you, sir. It is a very serious problem.

Mr. Conyers. Mr. McClory, do you have questions?

Mr. McClory. No, thank you very much, Mr. Chairman.

Mr. Conyers. I recognize the gentleman from Missouri, Mr. Volkmer.

Mr. Volkmer. Just a couple of brief questions.

One, how many producers can you identify without naming, but by number, in Los Angeles? Not an estimate but actually that you have knowledge of?

Mr. Martin. Sir, that would be, when you talk about a producer, as I said earlier, most chickenhawks and child molesters are themselves producers, because most of them photograph their victims, and most of the stuff doesn't get into the commercial publications.

Mr. Volkmer. What I am talking about is commercial producers right now; that is what I am talking about, one that does the publications, the one that makes the films.

Mr. Martin. Strictly producers?

Mr. Volkmer. Yes.

Mr. Martin. In the neighborhood of 30 to 50.

Mr. Volkmer. Now, how many distributors would you estimate there are that distribute the films and the books and the magazines in Los Angeles?

Mr. Martin. Probably 200.

Mr. Volkmer. Thank you very much.

Mr. Conyers. The gentleman from Ohio, Mr. Ashbrook.

Mr. Ashbrook. Thank you. I just had one question.

I arrived late and you may have touched on it, but I assume from what you are saying that you think there is a need for Federal action in this field, because State and local investigators and law enforcement agencies are at a disadvantage in this particular area. Am I right in assuming that or would you care to comment on that?

Mr. Martin. Sir, I believe that the problem is not only just in the State and city of Los Angeles, it goes all over the Nation, and I definitely think we need something federally that the Federal agencies can assist local law enforcement in these investigations.

Mr. Ashbrook. You would contemplate the Federal Government, through the Justice Department assisting your effort, or do you look upon them taking a lead in the area?

Mr. Martin. I always look upon a Federal agency as taking a lead because they are nationwide. I am restricted to the city and county of Los Angeles, and I, therefore, would look up to the Federal agency to take the lead. I think it's their responsibility.

Mr. Ashbrook. I guess the last question, do you think it's the type of situation where the city, State, and local law enforcement agencies can and are handling the problem. Would you envision, let me phrase it again, would you envision the city of Los Angeles being able to curb, prevent these abuses without a Federal law?

Mr. Martin. Absolutely not.

Mr. Ashbrook. Thank you.

Mr. Conyers. The gentleman from Pennsylvania, Mr. Ertel.

Mr. Ertel. Thank you, Mr. Chairman.

I was interested in your comment about the labeling and the suggestion that we require labeling and the distributor to keep a log or book on this. What would you do about the forgery of a false name situation? Obviously the producer would not give a true name, and he would make up a false name. Then, going to the distributor, if you look at his book, he would have a false name, which would probably not be very productive in prosecution of the producers.

How would you suggest we handle that situation?

Mr. Martin. I would probably think the producer that produced the material in some cases would use a false name.

Mr. Ertel. Don't you think he would always?

Mr. Martin. That would make it more difficult, of course, and probably the model might use a false name also. The only thing I can say would be to get some kind of legislation that requires them to give a true name.

Mr. Ertel. I guess then what we would be doing is prosecuting people for giving false names on a statute. We still have really the same problems of locating one, the producer, and two, locating the victim. We really have the same problems in the final analysis.

Mr. Martin. Yes, sir, that could pose a problem. How do I answer that question? I don't know. I don't have an answer for it.

Mr. Ertel. I am just suggesting that possibly that isn't a real tool, and you suggested that maybe the labeling, your idea, would be a tool to get back to the people and be able to identify them. I can understand why you want that. I am just wondering why that would be the right tool.

Mr. Martin. If you are in business and handling a product, I am sure in your own mind you know who brings in your product, who your salesmen are, and I am sure that the distributor of material would know who the producer was.

Mr. Ertel. We get back to the same problem with the drug enforcement, the false names, the runners, the people of that sort, which really are the throwaways, if you want to call it that. You get the runner but you never get the principal; isn't that pretty much what we will be doing here?

Mr. Martin. I think you are going after the principal when you go after the producer and distributor.

Mr. Ertel. But he is going to insulate himself under this.

Mr. Martin. If we only get to the child involved, then we would be doing a credible job.

Mr. Ertel. I would like to turn to another area and you probably have some knowledge of this. By organized crime I mean not just a local syndicate within it but I mean a nationwide group. Can you give me any idea of your knowledge of participation of organized crime in this area, not just pornography but child pornography specifically?

Mr. Martin. I don't think to my knowledge that I know of any direct ties. In other words, distributors of this material are not family members. I do know that some of the people that distribute child pornography deal with organized crime.

Mr. Ertel. I guess you are suggesting they have contacts into organized crime, but are not the principals of organized crime; correct?

Mr. Martin. That is correct, to my knowledge.

Mr. Ertel. The other question I have is you talked about the magazine Broad Street Journal; am I correct? How is that distributed?

Mr. Martin. By mail order only, through the mail.

Mr. Ertel. Obviously, as you said, that is legal. You are not suggesting we try and prevent that thing from going through the mail, are you?

Mr. Martin. No, sir. I don't think there is any way we can.

Mr. Ertel. Constitutionally.

Mr. Martin. Any way.

Mr. Ertel. I appreciate your testimony. I understand some of the problems you face, and that is why I was trying to get to those to see if there was some way we can give you some tools to work against that problem.

Mr. Martin. Thank you very much.

Mr. Conyers. We are all indebted to you.

We have our colleague from North Carolina, Mr. Gudger.

Mr. Gudger. Mr. Chairman, I have one question and one only, because you have resolved most of the matters I have been concerned about this morning.

Mr. Martin, do you know of anything being done by the National Association of State Legislators to bring about uniformity of obscenity laws? My reason for posing this question is that North Carolina just like your own State apparently has a statute making it a violation of the obscenity laws to use an infant in photography of this type, and what I am asking you is do you know whether or not any effort is being made to bring about uniformity by the Association of State Legislators? Have you testified before them to express these concerns?

Mr. Martin. No, sir, I haven't, but as I understand the obscenity laws it is a community that makes up what is obscene in their own community, and I think what would govern is what community you are in as to what material would be declared obscene.

Mr. Gudger. You have made no particular study of the various State statutes?

Mr. Martin. No, sir.

Mr. Gudger. In this field. You are referring, I am sure, to the recent Supreme Court cases, and you have answered my question. You just don't happen to be knowledgeable in this field.

Thank you very much.

Mr. Martin. Yes, sir.

Mr. Conyers. I want to thank you on behalf of the subcommittee, but I would like to just close by raising this question for the record. Have there been any systematic investigations of the production and distribution of child pornographic literature of films in California anywhere?

Mr. Martin. Yes, sir.

Mr. Conyers. Where?

Mr. Martin. In Los Angeles.

Mr. **Conyers.** Tell me about it.

Mr. **Martin.** In 1973 I was involved with Guy Strait. Guy Strait was a producer, in my opinion was one of the largest producers and distributors, and the investigation started from two films that I received from a lab. The film depicted young boys, involved in explicit sex.

I found that Guy Strait lived in a home in Hollywood Hills himself and placed a surveillance on his home one night when I found a vehicle in a driveway. The first two people that walked out of the home that morning were two of the boys that had been depicted in the films.

I served search warrants there, finding a shooting location. I went to a trailer in Redwood City, Calif., which was used as an editing trailer by Mr. Strait, and some children involved with him. I picked up a film, an unedited film, which showed Mr. Strait with a 16 millimeter camera on his shoulder with 3 boys laying in a bed, and this came out of the reflection in the mirror in the Holiday Inn.

Mr. **Conyers.** Of course, this is one case. I am talking about a systematic investigation of the production of porno films involving children. That is one case. What about the whole area?

Mr. **Martin.** I don't understand your question, sir.

Mr. **Conyers.** Well, you say that there are about 30 to 50 producers and maybe—what did you name—about a couple hundred distributors maybe?

Mr. **Martin.** Yes, sir.

Mr. **Conyer.** Has there been a systematic investigation of all of them?

Mr. **Martin.** Absolutely. I worked at it for 5½ years, and it dealt with the distribution. I was more concerned at the time with adult pornography than I was child pornography. In the last year and a half I think child pornography has started rising rapidly because the pornography industry has done everything that I know of imaginable.

Mr. **Conyers.** Just to short circuit what could be a much longer discussion, would you agree with this statement: that most law enforcement agents give very low priority to children except when they are public nuisances, and that this lack of attention by law enforcement reflects low priority generally for children in the society, maybe in addition to the lack of laws on the subject?

Mr. **Martin.** That is a hard question to answer, Mr. Chairman.

As far as giving low priority to children, in some areas, yes, I think law enforcement gives low priority to a hustler type child that has existed. I do believe that because most law enforcement handles cases that come to them, not cases they go out and make. I would have to say yes, probably, it is a low priority.

Mr. **Conyers.** What the subcommittee wants to know if you are in a unit that is combating this problem you have identified maybe 50 producers, a couple hundred distributors. You have told us about the law. You tell us about your concern. What goes wrong? I mean how come they are winning and we are losing? Why don't we go in with the laws that we have? They are clearly violating the laws. Why don't we make the case and prosecute?

Mr. **Martin.** I think the main concern of the Federal level that you talk about the obscenity standards——

Mr. **Conyers.** I am not talking about the Federal level. I am talking about Los Angeles, Calif., to which we are indebted for starting the first sexual exploited child unit. I am not trying to deprecate your work, or the work of the police department, but what we have to find out is where is the causal connection broken. We have criminal conduct. We have a law enforcement unit dealing with it, and yet you say we are fighting a losing battle, and there are more of them than there are of us. How come?

Mr. **Martin.** I cannot answer that point, how come.

Mr. **Railsback.** Would you yield?

Mr. **Conyers.** I certainly will.

Mr. **Railsback.** Along those same lines, Mr. Martin, you would certainly not say that you have adequate staff, or that there is adequate legal authority throughout the country, forgetting Los Angeles I think the chairman is asking you why haven't we been more successful, and to me that translates do you have enough men?

Mr. **Martin.** Absolutely not. I could use 100 men in my unit right now in the city of Los Angeles alone to combat the problem that I know about, and I have 6. So this is the problem.

I don't think the public is really aware of what the real problem is, and you don't become aware of that until you start talking to the kids, and start talking to the people involved, and really find out how big this problem really is, and how far it runs.

Mr. **McClory.** Would the chairman yield to me for a comment?

Mr. **Conyers.** Yes.

Mr. **McClory.** Mr. Chairman, I think that the extreme importance of this hearing, the importance which to me especially the Chicago Tribune was giving to this subject, is focusing national attention on the need for beefed up participation by police departments and law enforcement agencies and for the need of some additional legislation, perhaps Federal legislation, and that is the importance of this hearing. Thank you.

Ms. **Holtzman.** Mr. Chairman.

Mr. **Conyers.** Yes; I yield to the gentlewoman.

Ms. **Holtzman.** I think the chairman has raised a very important question, one which I was trying to get at earlier.

Let me see if I can pose the question this way. If you had 5 or 10 times the number of police officers and investigators on your staff, would that assist you in dealing with this problem? Are we really talking about a lack of people to do the investigating, to do the apprehension? Is that really what the problem is?

Mr. **Martin.** That is a problem, but I think really the problem is public awareness.

My problem, No. 1 problem that I have, is locating the victim, of knowing who the victim is. I don't have any laws currently that would help me and assist me in identifying the victims of child pornography.

Of course, manpower is always a problem, and I could certainly use more manpower in the city of Los Angeles to work this problem. But this is a new area. No one has really investigated it before

Ms. **Holtzman.** But you say there are 40 producers now. It seems to that you already have plenty of information in terms of going after these people.

Mr. **Martin.** That is correct.

Ms. HOLTZMAN. And if you had enough staff and enough police working on it you probably would get all 40 of them; is that correct?

Mr. MARTIN. That is correct, one at a time.

Ms. HOLTZMAN. Maybe all at one time you had enough people?

Mr. MARTIN. That is true, but they don't work from 8 to 5 like most people do, and it is a very time consuming type of investigation through surveillance and whatever. They may shoot once a week, or once a month, or something like that.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Martin, we are going to need your continued assistance to us as we try to make a nexus, and I am going to, after we return from the vote that is taking place on the floor, continue the question of law enforcement and the legal considerations of Congressman Kildee and Attorney Bob Leonard, who heads the National District Attorneys Association. We want to continue this line of questioning in 15 minutes.

The subcommittee stands in recess.

[Brief recess.]

Mr. CONYERS. The subcommittee will come to order.

I am very pleased to call to introduce our next witness our distinguished colleague from Michigan, Mr. Dale Kildee, who represents the 7th District, and who has introduced H.R. 3913, along which he has gathered a number of sponsors, and is the subject of our consideration here today.

We welcome you to introduce the next witness for us.

TESTIMONY OF HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KILDEE. Thank you.

Mr. Chairman and colleagues, as author of H.R. 3913, I would like to say that the existence of sordid sexual exploitation of children deeply shocks and outrages me, as I am sure it does you. The sexual abuse of children is presently being encouraged by the greed of people who have no sense of social responsibility or decency.

I feel that existing State and Federal statutes do not adequately address the problem. For the most part, States have not yet addressed the problem of the commercial sexual abuse of children. The existing Federal statute which prohibits interstate shipment of obscene materials has not prevented an increase in sexually explicit materials employing children.

I might comment that the psychological impact of sexual abuse is well documented. First, there is a disturbing tendency for parents who abuse their children to have been victims themselves while they were children. The increase in sexual abuse creates frightening implications for future generations. Second, children who have been sexually abused tend to have sexual dysfunctions later in life in terms of promiscuity or in terms of inability to have a sexual life at all.

In the early part of this century, the Congress took action to regulate the conditions of the employment of children because of the atrocious working conditions that existed. I deeply believe that just as pernicious as the sweatshops which left physical scars are the modern day conditions which have psychic scars. I feel that responsible legislation is needed to prevent these activities.

Under the child labor law, not only was certain child labor declared illegal, but the products of that child labor could not lawfully be sold.

I am joined in this attitude by a close personal friend who has been asked to testify before the committee today. Bob Leonard has been Genesee County, Michigan's prosecuting attorney for 14 years. In addition to being an excellent prosecutor of criminal activities, he has been particularly responsive to the needs of the people in our home community. He founded and has operated an extremely effective Consumer Protection Division. He was responsible for setting up one of the first rape crisis centers in the country. His concern for the problems facing our community has been widely recognized. On a local level, he was in the enviable position in the last election of having no opposition.

His activities have even been recognized on a national level. He is the president-elect of the National District Attorneys Association. I think that that recognition is indicative of the thoroughness and hard work that goes into his job.

Bob has now undertaken the task of addressing the problem of the criminal sexual abuse of children. He played an instrumental role in setting up the task force of the National District Attorneys Association which is dealing with this problem.

I take great pride in introducing my prosecutor, Robert Leonard.

Mr. CONYERS. The subcommittee welcomes you, Attorney Robert Leonard. You are well known to a number of us. We congratulate you on becoming the president-elect of the National District Attorneys Association.

You prepared a thoughtful statement and exhibits which, without objection, we will incorporate into our record at this point and then will allow you to proceed in your own way.

[The prepared statement of Mr. Leonard follows:]

STATEMENT BY ROBERT F. LEONARD

We're here today to address a problem that was virtually unrecognized as recently as six or eight months ago.

The problem of sexual abuse of children has long plagued our society, Such offenses have proven difficult for law enforcement because of an inability to detect the crime where many perpetrators are for the most part relatives and friends and youth workers with ulterior motives and where the victims do not or cannot complain to someone who will listen. If complaints about such offenses are made, the child very often will ultimately yield to family pressure to cover up the embarrassing abuse. Or, the victims' fragile memories and child-like perceptions often preclude successful prosecution.

Recently, reports of sexual abuse of children have come from widely scattered points across the country and information gathered by investigating these incidents has made it apparent there is a new and pericious dimension to an already grave problem.

Abuse for profit is manifested in child prostitution and kiddie porn and has created a multimillion dollar industry built on the physical and psychological brutalization of thousands of our young citizens.

Pornography should not be the major focus of our concern. It is brutalization of our children suffering perverted physical and psychological abuse that has brought us here today, and the reading and viewing material depicting such acts is but a spin-off of the underlying victimization.

The tentacles of this illegal activity form an underground network reaching from New York to California and Michigan to Louisiana. Prosecutors in cities across the country have uncovered and compiled information pointing to a high degree of exchange and communication among those who prey on our children. Seemingly isolated cases of such deviancy reveal a frightening set of sophisticated intercommunications upon closer scrutiny. Please permit me to review a few of the more recent headline stories:

A Michigan Scoutmaster, once employed as a Scouting executive is charged with criminal sexual conduct stemming from incidents with young boys.

Four Michigan men are arrested separately for sexual exploitation and pandering of more than 30 boys between the ages of 10 and 14. While not an organized ring, they informally exchange victims or names and the number of boys involved may ultimately range to as many as 300.

Six adult men are charged in Illinois for running a nationwide organization alleged to use camps and churches as vehicles for luring runaway youths into becoming male prostitutes to serve wealthy homosexuals.

Two Illinois men are picked up for allegedly using two 14-year-old boys in a pornographic movie which they planned to distribute across the country.

New Orleans police arrest a probation officer and foster father of two state wards for aggravated rape and aggravated crimes against nature on 8 to 12 year-old-boys. He is also a former Scout troop leader.

An Episcopal priest is under arrest in Tennessee on 16 separate counts involving child abuse and pornography at the boys' farm he directs and where he receives wards of the Tennessee courts.

The operator of a Michigan nature camp for boys is now serving time in prison for criminal sexual conduct with a 10-year-old boy.

A Michigan philanthropist is being sought on state and federal charges for two counts of criminal sexual conduct involving 8 and 14 year-old boys which took place on an island he owns and for which a nature camp was planned.

A New Jersey "Church" purportedly functions as the front for boy lover movement publications. Many of these people and organizations interrelate through the exchange of information and even the exchange of the child victims themselves.

One of the best illustrations of this tragic phenomenon was revealed just last week as four men were the first of many expected to be convicted in a wholesale sex operation based in New Orleans, but with national, and even international, connections. These men organized a boy scout troop to attract their young victims. They are also linked to a boys school in Florida and one of them is sought on an earlier child molestation in England. They made extensive use of underground pedophiliac publications as a technique for locating and distributing children. Nearly all of the offenders in this scheme are well educated and sophisticated individuals who have used their responsible community positions as a "cover" for deviant and destructive behavior.

These stories are surfacing in state after state and through cooperation among members of the National District Attorneys Association, we have discovered that these child abusers are zealous proselytizers of their perverted notions. We have evidence connecting offenders in Michigan, Illinois, Louisiana, California, Tennessee, New Jersey, and other states.

In February of this year the National District Attorneys Association formed a Task Force to cope with these unique cases. In early March we contacted Mr. Benjamin Civiletti, who heads the Criminal Division of the Justice Department, out of a realization that federal involvement is absolutely necessary to effectively surmount the obstacles created by local jurisdictional limits. He has advised us that the FBI and Postal Inspectors' Service now have pending between 25 and 30 separate investigations involving commercial sexual exploitations of children. Mr. Civiletti's work and cooperation with our member prosecutors has been an indispensable aid.

Our local experience clearly illustrated the need for a federal attack on the problem. County district attorneys face enormous difficulty and expense in seeking to investigate multistate offenses. My county budget permits us to extradite perhaps a dozen out of hundreds of offenders each year who might be subject to such process. When a conspiratorial group of individuals from several states combine to molest children and even produce movies across state lines depicting their abuse, where else but in federal court should the prosecution take place? What state should try such a case? What state would want to prosecute it? What state has the money to prosecute it?

A reporter for the Traverse City Record-Eagle has tracked the activity of a single suspect who disappeared from a Michigan county a few months ago, shortly after he was charged with two counts of criminal sexual conduct involving 10 and 14 year-old boys.

Dwyer Grossman has been linked to four organizations suspected of being fronts for child pornography. One of the organizations is described as a "children's mission". Another is a "church" and "educational foundation" for youth. They are believed to have reaped the benefits of full tax exemptions from the Internal Revenue Service and state taxing units as charitable organizations. One of the "fronts" is headquartered in New Jersey; another is purportedly based in Illinois.

The suspect lived in a filthy New York apartment for at least five months, where the walls were covered with "tons of photographs" of children at play at his summer camp, according to his apartment owner.

The product of a wealthy Long Island family, Grossman was graduated from Cornell University, then taught for 10 years in an exclusive boarding school for boys in New Jersey. He then spent two years at a private boys' academy for students in fourth through ninth grades. He is alleged to have been director of a boys' camp in Vermont.

Records reveal that Grossman applied to serve as a Big Brother in a California county while scouting locations for a boys' camp in that state.

He apparently actively sought funds from wealthy contributors, including a Michigan philanthropist, in order to get his camp underway.

While there is a need for a multi-faceted attack on this problem, no simplistic answers exist and we must find an approach that respects sacred First Amendment and privacy rights.

Supreme Court Justice Hugo Black once remarked that, "laws adopted in time of dire need are often very hasty and oppressive laws, especially when, as often happens, they are carried over and accepted as normal". In responding to public concern over child pornography and abuse we should not prohibit offensive conduct by trampling upon the rights of expression guaranteed by the First Amendment of the U.S. Constitution. In fact, I have some questions about the language used in parts of the proposed Child Abuse Prevention Act derived from my concern for First Amendment rights.

And yet, I have an overriding belief that federal legislation is desperately needed and that line-drawing, if it occurs, should be to protect the now defenseless minds and bodies of our children. We all know of the tremendous emotional and physical growing pains experienced in a normal childhood. We can only imagine the frustration, anguish, fear and devastation that might result from a single aberrant sexual encounter.

A respected Michigan psychiatrist-psychoanalyst states a generally-acceptable view of child development that if a child gets through the first six years of psycho-sexual development in a healthy state, then a single seduction or molestation, whether heterosexual or homosexual in nature, will not alter his sexual role. However, a child with a flimsy sexual identification at age seven or eight may suffer permanent development damage and a reversal of his heterosexual identification by an environmental trauma of contact with a pedophiliac of either sex. The doctor concluded that such encounters are more likely to tip the balance for a seven or eight year-old than for a fifteen year-old who may have more fully acted out or solidified his sexuality.

The solution is also made difficult by the types of people we have discovered as the perpetrators of such exploitation. They are not always the stereotyped dirty old men in sleazy trenchcoats. Most are clothed with respectability as priests, counselors, camp officials, bus drivers, coaches, Scout leaders and Big Brothers. Certainly the overwhelming majority of people in these service functions are contributing and enriching influences on the lives of our children. So we must find a means of screening out the abusers without destroying the valuable contributions made by others.

We cannot arrive at solutions to these complex and amorphous circumstances without further study. We might explore the desirability of requiring some screening or criminal-records-check of individuals working for organizations focusing on children's activities. Perhaps civil liabilities for failures to properly screen workers should attach.

Federal sanctions might be directed against organizations receiving Federal funds, directly or indirectly and who permit sexual exploitation to occur behind the facade of legitimacy.

There certainly should be a national effort to educate parents and children. Whole communities must be warned of the infiltration of a small number of individuals who would prostitute friendships and organizations for self-gratification. We must guard against making courts the unwitting accomplices of these criminals who take advantage of weak state supervision and licensing standards to receive funding and children for their own abusive purposes.

With offenders who are unusually bright, yet sick individuals, we need special legislation that carries unusual penalties. We may want centralized mental treatment or behavior modification centers designed to alter the deviant acts of these people, if possible, before they are returned to society, if we conclude they should be returned at all. We need also to study their methodology so that we can better ferret out, convict, and control other offenders.

As one of the legislative means of addressing this complex problem, I am in agreement with the basic thrust of the proposed Child Abuse Prevention Act. The proposal succeeds in aiming criminal sanctions as directly as possible at the acts of sexual abuse that are inexorably tied to the material produced. The Act also succeeds simply by its recognition that the problem is national in scope and requires at least in part, a federal solution.

However, I do entertain some questions about the broad language of the statute which I raise for discussion with this distinguished group.

For example, might this statute be interpreted to include the newsperson, the anthropologist, or documentary filmmaker who may face criminal sanctions under the broad language of the statute even if acting responsibly for legitimate news or academic purposes. On the other hand, Congress might decide that even for serious artistic statements it should be illegal to permit a child to simulate or carry out any sexual act on the screen because of the possibility of psychological damage to the child-actor. Or Congress might conclude that such a decision should be left to the parent or that to impose federal law as the bill is currently worded would overreach the limits of governmental action in constitutionally protected areas.

Under Section 2252 (a) (2) of the proposed Act, are we imposing an unconstitutional mandate on individual adult bookstore operators to bear the burden of determining whether each and every person appearing in every movie or book in his store is over or under the magic age of 16. The real question here is whether the law is enforceable against the local bookstore seller? Or is this a matter that might better be left for local government to control?

In my opinion the federal government might better focus on the actual physical abuse of the child, the interstate transportation of children for that purpose, and the photographing, filming and wholesale distribution of such materials between states.

Perhaps we should review already existing federal law for possible revisions that would help in stopping this abuse, even if as a supplement to the proposed statute. For example, the Mann Act Section 2421 might be amended to refer to the transportation of "persons" rather than being limited to "women or girls" as it now reads. We now know that young boys are transported across state lines for the same immoral purposes.

These general considerations, of course, are offered to assist you in arriving at the best possible legislation after considering all arguments.

Perhaps, I have raised more questions today than I have answered. I hope, however, that I have acted as a catalyst in moving forward to protect children while at the same time helping to avoid undue interference with the constitutionally protected rights of all our citizens. Thank you.

LIST OF EXHIBITS

Membership of National District Attorney's Association Task Force on Sexual Abuse of Children.

Hermes Magazine. (May be found in subcommittee files.)

Letter from Robert F. Leonard, Prosecuting Attorney, Genesee County, to Benjamin Civiletti, Assistant U.S. Attorney General, March 4, 1977.

U.S.C.A. 18 § 2421, Mann Act.

Flow chart of national connections within boy-lovers community constructed by convicted child molester.

Newspaper articles.

NATIONAL DISTRICT ATTORNEYS ASSOCIATION TASK FORCE ON SEXUAL ABUSE OF CHILDREN

Hon. Bernard Carey, States Attorney, Cook County, Civic Center, Chicago, Ill. 60602.

Hon. Harry Connick, District Attorney, Orleans Parish, 2700 Tuland Avenue, New Orleans, La. 70119.

Hon. Joseph Freitas, San Francisco County District Attorney, Hall of Justice, 880 Bryant Street, San Francisco, Calif. 94103.

Hon. Robert F. Leonard, Prosecuting Attorney, Genesee County, 200 Court House, Flint, Mich. 48502.

Hon. J. William Pope, Jr., District Attorney General, 18th Judicial Circuit, P.O. Box 280, Pikeville, Tenn. 37367.

Hon. Dennis Ryan, States Attorney, Lake County, Court House, Waukegan, Ill. 60085.

LETTER TO THE ASSISANT U.S. ATTORNEY GENERAL

NATIONAL DISTRICT ATTORNEYS ASSOCIATION,
Chicago, Ill., March 4, 1977.

Mr. BENJAMIN CIVILETTI,
Assistant Attorney General-Designate, Criminal Division, Department of Justice
Washington, D.C.

DEAR MR. CIVILETTI: Just a note to express my appreciation to you and your staff for the courtesies extended us when we met with the Attorney General and you in your offices on Friday. I believe such frank exchange of ideas will be beneficial for all.

As I mentioned to you on the phone yesterday, the National District Attorneys Association is anxious to develop a close working relationship with your department and to meet with you to get some insight on your thoughts and philosophy on the problems of the Criminal Justice System.

Since it is impossible for you to attend the San Diego Conference this month, hopefully you will be able to attend our spring Board of Directors meeting in Chicago May 11–13 at the Continental Plaza. If this is posible, we would be happy to make accommodations for you at the hotel. There are approximately 75 board members and about 60–65 generally attend.

Also pursuant to our phone conversation, I would like to briefly expand on the matter of sexual child abuse. The problem appears to be national in scope and obviously its implications are tragic. It involves primarily children between ages 5 to 15 being sexually abused by adults. It seems there may very well be a national conspiracy made up of an inter-relating network of foster homes, churches, nature camps and other similar programs ostensibly set up to handle wayward, incorrigible, homeless youngsters. These groups are not always tied together by any common denominator other than many have the same M.O. or the same organizer. Someone that needs investigation is a person by the name of Dyer Grossman, who it appears, goes from state to state setting up these organizations, and in some cases, affiliating with a New Jersey church under circumstances which avoid any scrutiny by the IRS.

These phony organizations are established in such a way as to be the conduit to accumulate youngsters to be used in making porno films and being available for sexual activities with adult perverts. Some of the expenditures for these youngsters are unknowingly being provided by public funding. These programs are being stocked with young children by over-burdened courts, insensitive parents, and in some cases, well-meaning officials. Once the youngster is placed in the program whether Michigan, Tennessee, Louisiana or any other state, he is trapped and becomes the easy prey for the sexual deviates who in most cases are running the programs.

These adult perverts appear to be aware of the network and travel between states attending these camps and sexually abusing these children for money usually paid to the camp officials. Many of these people involved in this type of activity are very wealthy individuals and some are respectable community leaders in their home towns.

The district attorneys with whom I have spoken who have this problem have told me that their communities are outraged and they are anxious to cooperate in any way in dealing with this matter. They feel very restricted in confronting the issue because of the jurisdictional limitations. This is the reason I brought the matter to your attention. If our suspicions are borne out and there is a national network, it would seem that the federal government could be helpful in assisting local district attorneys in attacking this problem. If you would, please let me know your thoughts on this matter.

The Liaison Committee between the National District Attorneys Association and the Attorney General is being set up and the names of the Committee should be to you in the next four or five days.

If I can be of any further assistance in this matter or any matter of mutual concern, please contact me.

Sincerely,

ROBERT F. LEONARD,
President-Elect.

CHAPTER 117—WHITE SLAVE TRAFFIC

Sec.
2421. Transportation generally.
2422. Coercion or enticement of female.
2423. Coercion or enticement of minor female.
2424. Filing factual statement about alien female.

§ 2421. TRANSPORTATION GENERALLY

Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or

Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

June 25, 1948, c. 645, 62 Stat. 812; May 24, 1949, c. 139, § 47, 63 Stat. 96.

HISTORICAL AND REVISION NOTES

Reviser's Note. Based on Title 18, U.S.C., 1940 ed. §§ 397, 398, 401, 404 (June 25, 1910, c. 395, §§ 1, 2, 5, 8, 36 Stat. 825–827).

Section consolidates sections 397, 398, 401, and 404 of Title 18, U.S.C., 1949 ed.

Section 397 of Title 18, U.S.C., 1940 ed., containing a definition of the terms "interstate commerce" and "foreign commerce" was omitted as unnecessary in view of the definition of those terms in section 10 of this title.

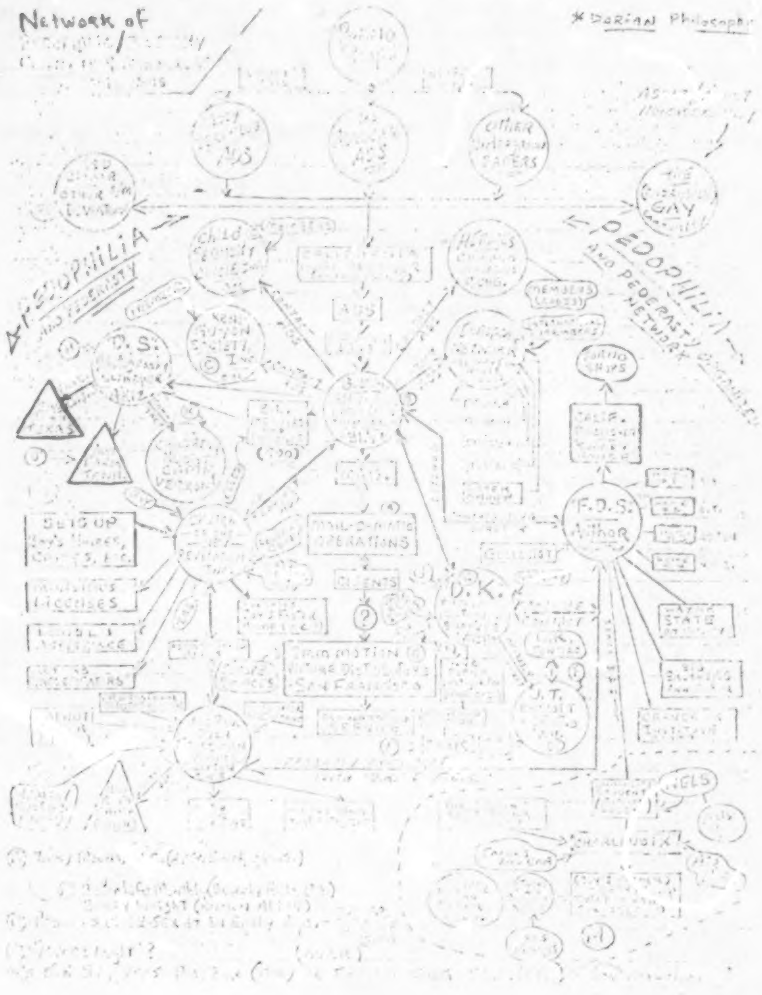
Section 401 of Title 18, U.S.C., 1940 ed., prescribing venue was omitted as unnecessary in view of section 3237 of this title.

Section 403 of Title 18, U.S.C., 1940 ed., was omitted. No definition of "Territory" is necesary to the revised section as it is phrased. Construction therein of "person" is covered by section 1 of Title 1, U.S.C. 1940 ed., General Provisions, as amended. Last paragraph of said section relating to construction of this chapter was omitted as surplusage.

This chart was drawn by Gerald S. Richards, now serving 2–10 in Jackson State Prison, Jackson, Michigan, for sexually molesting a minor male.

The contents of the chart have not been verified in full.

FLOW CHART OF NATIONAL CONNECTIONS, ETC.


Network of
* Dorian Philosophy
ADS
OTHER Underground PAPERS
GAY
PEDOPHILIA AND PEDERASTY
PEDOPHILIA AND PEDERASTY NETWORK
Child Sensuality Society
MEMBERS
D.S.
TEXAS
TENN.
SETS UP Boy's Clubs, Camps, Etc.
Licenses
Legal Assistance
(220)
MAIL-ORDER OPERATIONS
CLIENTS
?
SAN FRANCISCO
D.K.
J.T.
F.D.S. Author
CALIF.
STATE
GLS

[illegible] 12-9-76

G — "F.B.I." — [illegible] by Guy Strait [illegible]

(F.) Joe Tazlaar (Boy Friend, Mark Schuck, Port Huron)
May be Found through Another B.L. = Fred [illegible] (Alias Larry [illegible]) of Pontiac, Michigan.

(G.) Donald Keller, Edmonds, Washington (uses P.O. Box)
In contact with [illegible] pretty quick [illegible]

(H.) Donald Sandberg, Phoenix, Arizona. — Add 35 [illegible]

(I.) Jerome Rogg, P.O. Box (Grand Central Station), N.Y.C., N.Y. (Probably a mail forwarding address)

(J.) Some boys in the Farm's brochures have appeared as models in pornographic magazines in adult Bookstores. (Name Avail.)

(K.) Literature on this sent in June, 1976, from Sandberg (H) who claims to know the man who's run this camp 2 years now.

(L.) "For Money or Love" — [illegible] book on subject of pederasty in USA — Forward by U.S. Senator Birch Bayh — Keller (G) claims to have written a substantial portion based on boys he claims to have procured at "Playland" Arcade in Times Square — the book gets into Boy-prostitution in USA [illegible] Keller wrote photos [illegible] for [illegible]

"AT Woods" —> ([illegible])

(M.) "Hers" [illegible] for many years [illegible] Benny [illegible]
is Ha[illegible]
[illegible]

NEWS

PORNO RING USES CHURCH, TAX LAWS

(By Marilyn Wright)

TRAVERSE CITY.—A nationwide child pornography racket is hiding behind the moral aura and tax-exempt status of a church.

A four-month investigation conducted by The Record-Eagle has determined that the Church of the New Revelation of Kearny, N.J., is tied to an underground network that uses young boys for homosexual and pornographic purposes.

The investigation has further disclosed that the "church" and several other organizations like it have been granted income tax exemptions by the Internal Revenue Service, which considered them to be charitable organizations.

It was also learned that principals behind the homosexual pornography racket had duped at least two states into paying for the care of children while they were used for homosexual and pornographic purposes. Plans to apply for similar aid in other states, including Michigan, were in the works before they were uncovered by police.

This new information reinforces the theory held by law enforcement and child care authorities across the country that child pornography is not the work of a few "sick" amateurs, but of interconnecting organizations designed to profit substantially through the exploitation of children.

"It seems to be like spider webs strung out all over the nation," says Mason Spong, a New Orleans juvenile detective.

Three supposedly "charitable" organizations have already been pinpointed by police as alleged "fronts" for the production of pornography using young boys. They are Boy Scout Troop 137 of New Orleans, Boy's Farm Inc. of Alto, Tenn., and Brother Paul's Children's Mission, located on North Fox Island, which is part of Leelanau County just off Grand Traverse Bay.

In addition, three other corporations were set up as "tax dodges" and used as fronts for the production of homosexual child pornography, according to the confessions of Gerald Richards, now serving time in Jackson Prison on a criminal sexual conduct conviction. Richards has identified the organizations as the Church of the New Revelation and the Ocean Living Institute, both of New Jersey, and the Educational Foundation for Youth of Illinois. He said all three were involved in promoting homosexual behavior between boys.

(Richards was president of Brother Paul's Children's Mission and director of its nature camp, which was created and operated under the auspices of the Church of the New Revelation.)

An investigation of incorporation papers in three states confirms that a central figure in all the organizations cited by Richards goes by the name of Adam Starchild, an alias according to New Jersey authorities. Starchild is listed as the president of the Church of the New Revelation and was the primary incorporator of Brother Paul's. He is also listed as president of Ocean Living Institute and a trustee of the Education Foundation for Youth.

His name may be an alias but it's listed in the Kearny, N.J., telephone book and the man who answers says his name is Adam Starchild. In an interview with The Record-Eagle (see related story), he said the four organizations were not set up to be fronts for homosexual pornography but it is possible they may have been "used" for that purpose by Dyer Grossman, who has been identified as vice president of Brother Paul's, executive director of Ocean Living Institute and youth director for the Church of the New Revelation.

(Grossman, a New York teacher, is currently considered a fugitive from justice with federal flight warrants issued for his arrest on two counts of criminal sexual conduct with boys. Also being sought is Ann Arbor millionaire Francis D. Sheldon, who owns the island where Brother Paul's is purportedly located. He's also charged with two counts of criminal sexual conduct with boys and being sought under a federal flight warrant.)

Authorities in Tennessee and Louisiana have already admitted that their welfare departments were duped into making payments to help support children used for homosexual and pornographic purposes, in the belief they were aiding legitimate charitable organizations. Not until police raids closed down the Boy Scout Troop in Louisiana and the camp in Tennessee did the states realize the kind of camps they were subsidizing.

A plot to establish homosexual pornography camps in several other states with the help of state and federal aid was exposed by Michigan State Police with the arrest of Richards. They found in his possession a letter purportedly from Grossman suggesting prospective sites for "child care" organizations.

The letter speaks of how lucrative such "child care" sites can be, explaining that counties would pay up to $150 per month per boy; state agencies would pay up to $400 per month per boy; and federal agencies would pay up to $700 per month per boy.

The letter and other information obtained by police suggest government funds could be used to help support current or potential child care operations in Michigan, New Jersey, California, Arizona, Texas, Vermont, Washington, Oregon, and the District of Columbia.

The letter also suggests that profitability can be maximized if each such child-care site is set up under the auspices of the Church of the New Revelation or the Educational Foundation for Youth because of the income tax exemptions they had been granted by the Internal Revenue Service.

A check by The Record-Eagle confirmed that the IRS had indeed declared both organizations to be exempt from taxes without challenging or investigating their claim of being charitable organizations. The same "automatic" exemption was also granted to Ocean Living Institute.

On the surface, all three organizations appear to be legitimate religious and educational institutions in compliance with the IRS Code governing federal tax-exempt status.

Both the church and the institute were incorporated in Delaware in 1974, listing principal places of business in New Jersey.

The church was formed to train and indoctrinate ministers and brothers and sisters in the principles and teachings of the church and to ordain them to carry out its work, according to its articles of incorporation.

Ostensibly, Ocean Living was formed to promote education and research in oceanography.

Educational Foundation for Youth was more difficult to trace. The Secretary of State's office in Springfield, Ill. could find no record of its existence.

However, a clerk in Secretary of State's Chicago office, where the foundation allegedly was located, said it was a non-profit arm of a profit-making corporation.

Described as an import-export business, the parent company was incorporated in 1962 and was involuntarily dissolved in 1975 for failure to pay state franchise taxes.

Better Life, with publishing offices listed at 256 S. Robertson, Beverly Hills, Calif. (a mail-forwarding address), was advertised in literature distributed within the homosexual community as "a monthly paper serving the interest of pedophiles (for whom children are the preferred sexual objects) world wide. Features legal advice, media reviews, photos, poetry."

In another offering, Better Life Monthly was advertised as a "paper with articles, photos, poems, etc. relating to the subject of boylove. Also ads which put you in touch with others of like interest."

Its masthead proclaims that it is "the news magazine of Better Life, an international service organization that is seeking liberation for boys and boy-lovers."

Shelden, the missing Ann Arbor millionaire, has been named by Richards as a staff writer of the publication, police say.

According to Richards, the church offered to help Better Life readers set up child care organizations and camps.

Richards replied to the ad, he told police, and "Reverend" Grossman came to Port Huron from New Jersey to help set up Brother Paul's Childrens Mission.

It was on this trip, state police say, that Grossman is alleged to have committed homosexual acts with two Port Huron boys, ages 10 and 14. Police have photographs of the 10-year-old in the motel room where police say the incidents took place.

Shelden is accused of criminal sexual conduct involving a 14-year-old boy at Port Huron and with an eight-year-old boy on North Fox Island.

PORN RING FINDS GAPS IN CHILD CAMP LAWS

(By Marilyn Wright)

Traverse City.—Most adults have happy childhood memories of summer camp. Among them are carefree days of cookouts, making leather belts, earning Red Cross swimming badges, and singing around the campfire late at night.

It comes as a shock, then, to learn that places such as Brother Paul's Nature Camp for Boys, alleged to have been a front for a child pornography operation located on North Fox Island just off Grand Traverse Bay, can and do exist.

State police are investigating charges that young boys between the ages of seven and 16 were drawn to North Fox Island with promises of an "unspoiled paradise," only to be lured or coerced into committing homosexual acts. This activity was then photographed by adult directors, according to reports made to the state police, for use in hard-core pornographic magazines.

There are laws governing the establishment and operation of camps for children and the state Department of Social Services is charged with enforcing them along with regulations governing other child care organizations.

State Act No. 116 of the Public Acts of 1973 is specific about how such institutions should be run.

And, unlike the state laws governing charitable trusts and non-profit corporations, there are no exemptions. All child care organizations, including those run by churches, must be licensed.

The rules under which child care organizations are licensed concern such aspects as:

The operation and conduct of child care organizations and the responsibility these organizations assume for child care.

The character, suitability, training and qualifications of camp operators and other persons directly responsible for the care and welfare of children.

The general financial ability and competence of applicants to provide necessary care for children and to maintain prescribed standards.

The number of individuals or staff members required to insure adequate supervision and care of the children.

The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate fire prevention and health standards to provide for the physical comfort, care, and well being of the children.

Provisions for food, clothing, educational opportunities, programs, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of children.

Provisions to safeguard the legal rights of children.

Maintenance of records pertaining to admission, progress, health, and discharge of children.

Filing of reports with the department.

Discipline of children.

Transportation safety.

The rules certainly sound all inclusive, but the key seems to be whether or not camp operators apply for a license.

The directors of Brother Paul's Children's Mission did not apply for a license.

According to its promotion literature, the camp was in operation for two years, but the state Department of Social Services (DSS) was not aware of it until the Record-Eagle revealed it in a story.

DSS official Milt Firestone said all camps must be licensed under the law; however, unless the camp operators apply for a license or a citizen makes an inquiry into whether a particular camp is licensed, the department has no way of knowing if a camp is operating.

Failure to acquire a license before operating a camp does carry a penalty under the law: A fine of not less than $25 nor more than $100, or imprisonment for not less than 30 days nor more than 90 days, or both. The charge is a misdemeanor and would not appear to be a strong deterrent to those who might wish to ignore the law.

Asked if his department ever checked with the state Department of Commerce to get names of new corporations which list as a stated purpose the establishment of a children's camp, Firestone said the idea had never occurred to the DSS "but it certainly seems like a good idea."

But even if Brother Paul's had in fact applied for a license, there is reason to believe that without an unusually thorough investigation of all concerned, it might have been granted. On the surface, the prinicipals involved appeared to be the right kind of people to run a children's camp.

True, Gerald Richards, the president of the corporation and director of its nature camp, is now serving a two-to-10-year term in Jackson Prison on criminal sexual conduct charges. But before his arrest, he was a physical education teacher at St. Joseph's Catholic School in Port Huron, a businessman in that city and a candidate for local political office.

Francis D. Shelden, a director of the corporation and owner of North Fox Island, the alleged location of Brother Paul's is being sought by state and federal authorities on two counts of criminal sexual conduct involving young boys. But he is also the millionaire son of a prominent Detroit-area family, was a part-time university professor, a former director of Boys Republic and Cranbrook Institute of Science, and a volunteer Big Brother for the Ann Arbor YMCA program.

Dyer Grossman, vice president of Brother Paul's, also is a fugitive from justice. He is wanted on two charges of criminal sexual conduct. But he, too, is reported to be a member of a wealthy Long Island, N.Y. family, and taught science at two exclusive boys schools on the east coast.

These three men apparently had all the credentials—education, wealth, and respectability—to make them ideal applicants for licensing under Act 116.

Certainly North Fox Island—assessed at $312,000—would have met most of the criteria set down for camp facilities.

In addition, the camp was given even more of an air of respectability by the fact that it had a "church" sponsorship from the Church of the New Revelation. Without looking deeply into the background of the organization, DSS licensers would not likely have turned up the fact that the Church of the New Revelation is also suspected by police to be a front which set up similar child pornography camps elsewhere.

There appears to be evidence based on Brother Paul's own brochures, that the camp was operating since 1975. If it was operating without a license, it clearly would have been in violation of the law.

The basic problem still remains, however. How can you enforce the law when you don't know such camps exist in the first place? And how powerful a deterrent does the law provide when violating it may mean as little as a $25 fine?

Foster Dad Is Accused of Sex Assault on Boy

SUSPECT LICENSED BY STATE

(By Joyce Walker-Tyson and Eileen Foley)

A 33-year-old Detroit man, licensed by the state to provide temporary group home care for adolescents, has been charged with first-degree criminal sexual conduct involving a 15-year-old boy who had been in his care.

Raymond Pilara of 17214 Westbrook was arrested by Detroit Police Thursday night after the youth testified that Pilara forced him to perform homosexual acts during the eight months the youth was in his care.

Ralph Patterson of the Michigan Department of Social Services (DSS) said that Pilara had been under investigation for similar acts for some time.

"The police and prosecutors were aware that we were investigating him. Patterson said. "He had been picked up before and we removed all the children from his care about a month ago.

"There wasn't enough to book him on. We had heard some whisperings but there were no hard facts to go on."

A spokesman for the Wayne County Prosecutor's Office said that this was the first time they had been able to get one of the youths to testify. He pointed out that Pilara was in a position of authority over the children and they were afraid to refuse to do what he asked.

DSS Director John T. Dempsey had declared earlier this month that the department was seeking ways to tighten up the licensing of such homes. The move came after the Dec. 29 fatal beating of a teenaged girl in a foster home in Antrim County.

"We're looking at the whole question," Dempsey said. "We're going to see if we can tighten up the procedure."

In the Antrim County case, a Bellaire District Court judge ordered Wayne Stubbs, 31, of Mancelona, bound over without bond for trial on an open charge of murder.

The victim, Marilyn Kimball, 17, also of Mancelona, died of a skull fracture inflicted in a beating while she slept, according to witnesses who testified before Judge E. Patrick Murray. Witnesses disputed previous police reports that the girl was raped before her death.

Stubbs was operator of a state-licensed foster care home, and Miss Kimball, a runaway, was his ward.

He had held a foster home license for nearly six years although he was on probation from a 1962 commitment to a mental hospital for assaulting a woman in Benzie County and had been diagnosed at the hospital as having homicidal tendencies.

Stubbs will be arraigned Monday in Circuit Court.

Dempsey and local DSS officials point out that the need for foster and group homes far exceeds the number of people who apply to operate them.

"By and large those (adults) in foster care are well-motivated people," Dempsey said.

Locally the investigation will continue into the allegations against Pilara, Patterson said.

Pilara is being held in lieu of $50,000 bond.

Pilara is supervisor of technical programmers for the judicial data system of the Michigan Supreme Court. He has been in that position since the spring of 1974, a court spokesman said.

PORNO RING WEAVES INTERNATIONAL 'WEB'

(By Marilyn Wright)

Traverse City—A network of homosexual pornography, described by law enforcement authorities as a "spider web," slowly but insidiously weaved its way across the country and abroad, ensnaring eight-to-15-year-old boys in its path.

In the latest of a series of development, Boston area police last week arrested two prominent Massachusetts men wanted by Louisiana authorities in connection with an alleged pornographic ring operating out of New Orleans.

The suspects, charged with conspiracy to commit homosexual rape and aggravated crimes against nature, were identified as industrialist Richard C. Jacobs and realtor Hugh Scott Mellor.

Jacobs, 41, is single and lives in Waltham, Mass. He is listed as president of Jet Spray Corp., with corporate offices in Brookline, Mass. and subsidiary offices throughout the world. He was also reported at one time to be a part owner of the New England Patriots.

Mellor, 54, is married and lives in Brighton, Mass., authorities said. He is reported to be the owner and president of Reservoir Regra, Inc., a real estate holding company.

The alleged homosexual conspiracy was publicly revealed last month when the Record-Eagle reported that North Fox Island, the lush, 835-acre hideaway off Grand Traverse Bay owned by Ann Arbor millionaire Francis D. Shelden is believed by police to have been the site of alleged criminal sexual conduct involving young boys.

The North Fox Island allegations reportedly involve various crimes against nature, including sodomy, oral sex and the filming of these acts.

Shelden, scion of a prominent Detroit area famly, is still being sought by police.

An investigation is continuing into the possible involvement of other Michigan men in the homosexual ring, with Tennessee authorities indicating at least one additional warrant is expected to be authorized.

"It seems to be like spider webs strung out all over the nation," said New Orleans Juvenile Detective Mason Spong following a September raid on a Boy Scout troop headquarters.

The scout leader, Richard Halverson, 51, and 12 other men, including Jacobs and Mellor, have been charged with conspiracy to commit aggravated rape and conspiracy to commit aggravated crimes against nature.

Four of the suspects, including assistant scoutmaster Harry O. Cramer, 23, of Mt. Pleasant, S.C., are still at large.

Documents seized in the raid have led police to believe the men were running a sophisticated homosexual ring which may have involved as many as 30 youths, including wards of the Louisiana Welfare Department and members of the now disbanded Boy Scout Troop 137.

All of the New Orleans victims were eight to 12 years old, police said.

A search of Halverson's home also yielded card files with the names and addresses of boys in other states and stacks of pornographic snapshots and magazines, police said.

Many of the suspects, including Halverson who was a volunteer probation officer, apparently had worked with local volunteer agencies that deal with boys who are runaways or come from broken homes, according to New Orleans authorities.

Police said Halverson had even drawn up applications for state and federal money to establish homes for boys.

Similar allegations have surfaced regarding Shelden and his associates in Brother Paul's Childrens Mission, sponsors of the alleged homosexual nature camp for young boys on North Fox Island.

The 48-year-old Shelden, sought by State Police in St. Clair and Traverse City on two counts of criminal sexual conduct—one involving a 14-year-old boy in Port Huron and one involving an eight-year-old Port Huron boy on North Fox Island—is a member of the board of directors of Boys Republic Inc., a residential center which provides care for emotionally disturbed, sociologically maladjusted adolescent boys.

The director of the Farmington Hills center, Gordon K. Boring, expressed both shock and relief following the revelations first reported in the Record-Eagle.

"I can't tell you how shocked I was when I read the stories," Boring said, but indicated he also felt a sense of relief because Shelden had "no direct contact" with any of some 75 boys housed at the center.

"Thank God, only professional therapists, not board members, work with our residents," he said.

Shelden, a life-long bachelor, was reported in a 1975 interview with a downstate newspaper as devoting much of his time to Big Brothers, Inc., a nonprofit organization devoted to providing "father figures" to young boys from broken homes.

However, spokesmen for the Big Brother organization in Detroit, Flint and Port Huron vehemently deny Shelden was ever connected with that group.

Two associates of Shelden in Brother Paul's Childrens Mission, Gerald S. Richards, of Port Huron and Dyer Grossman, of Carmel, N.Y., tried unsuccessfully to join Big Brother, but their applications were rejected, authorities said.

Richards is presently serving a term in Jackson Prison on criminal sexual conduct charges involving a 10-year-old Port Huron boy. Grossman, sought by police on criminal sexual conduct charges also involving a Port Huron boy is now believed to be in the state of Washington.

Richards was listed as president of Brother Paul's Childrens Mission and director of the nature camp believed by police to have been operating on North Fox Island. Grossman was listed as vice president of the parent corporation.

Brother Paul's, incorporated in 1975, claims to be dedicated to the prevention of juvenile delinquency and operates "through the philosophy of naturopathy and naturalism," described as a system of treating diseases by the use of herbs and physical manipulation.

Courses at the "au naturel" camp included hygiene and care of the body, elementary anatomy and sex education, according to literature distributed by the mission.

Michigan State Police first began looking into Shelden's activities following the arrest of Richards, a Port Huron physical fitness teacher allegedly involved in procuring young boys for homosexual purposes and in filming those activities.

State troopers from the Ypsilanti post raided Shelden's Ann Arbor home on July 29, but no new evidence was turned up, authorities said.

Detectives from the Traverse City post were unable to obtain a search warrant to investigate Shelden's home and cabins on North Fox Island, police said, because under Michigan law, information on a crime must be current before warrants are issued.

Sgt. Don Chappell told the Record-Eagle that police in Michigan must move "within 24 or 48 hours" of a crime to obtain a search warrant.

However, pornographic films found in Richards' possession at the time of his arrest in July, plus films seized in the New Orleans raid on the Boy Scout headquarters, did lead Tennessee authorities to raid Boys Farm, Inc., in the Roarks Cove community, near Alto, Tenn., after police there recognized a couple of "actors" in the films, authorities said.

The boys farm, which housed wayward boys from throughout Tennessee, was founded and operated by an ordained Episcopalian priest.

The Rev. Claudius I. (Bud) Vermilye Jr., formerly the rector of the Alto Episcopal Church, was indicted on 16 separate charges, including three counts of crimes against nature, eight counts of aiding and abetting crimes against nature, four counts of contributing to the delinquency of minors and one count of using minors in the production of pornographic materials.

Among the items seized in the raid were pictures and films depicting homosexual acts between youths at the farm and a list of more than 270 "active sponsors" of the farm.

According to Tennessee authorities, Vermilye had operated the farm for the past five years. District Attorney General J. William Pope said the young boys had been sent to the farm by the state correction department, juvenile authorities and welfare agencies.

Pope said he has evidence that the boys were shown obscene movies to arouse them sexually and given liquor to stifle their inhibitions before sex orgies were held. They were then allegedly filmed by a hidden camera.

Some of the pictures were sold to "active sponsors" to raise money for the farm, the district attorney general said, and some of these sponsors allegedly came to the farm to engage in homosexual activity with the boys.

Shelden, the sole owner of North Fox Island, the alleged site of an alleged homosexual nature camp, is also listed as a sponsor of the Tennessee farm.

The Rev. Vermilye is divorced and the father of five sons, the oldest of whom disappeared mysteriously two years ago.

The charges against the 47-year-old priest have caused Tennessee authorities to look on the disappearance of his 22-year-old son "with a different light" although they have been unable to establish any link between the disappearance and the father's alleged activities at the farm.

"To us he's still just a missing person," said Pete Bouldin, an investigator with the district attorney general's office. "We don't have a body, and until we do, we don't have a crime."

The younger Vermilye disappeared July 5, 1974. His car was found several days later behind the student union building of a Sewanee seminary, and his empty wallet was found by a neighbor on Alto Road.

The priest told authorities at the time that his son was believed to be carrying about $300 and that he was "absolutely certain" that the son had been killed and buried in the Roark's Cove area.

He subsequently ran newspaper advertisements offering a reward for information about his son.

Authorities believe that the investigation into North Fox Island, New Orleans and the Tennessee boys farm has "only scratched the surface."

Correspondence and films seized in the raids came "from Australia and Canada and virtually every state in the Union," authorities said.

Police said they are interested in tracking down and prosecuting the sponsors who either engaged or attempted to engage in homosexual activity with these boys.

FOUR MEN CHARGED IN SEXUAL ABUSE OF FLINT YOUTHS

(By Daniel E. Richards)

More than 30 boys between the ages of 10 and 14 allegedly were sexually exploited and pandered by four Flint men who have been charged with sexual misconduct, according to the Genesee County Prosecutor's Office.

Lenore Ferber, the assistant prosecutor in charge of an eight-week investigation, said the men are accused of engaging the Flint youths in sex acts.

Three of the men have been arrested on charges of first- and third-degree criminal sexual conduct, Ms. Ferber said. A fourth man is being sought on similar charges, she said.

First-degree sexual conduct carries a maximum penalty of life in prison, and third-degree conduct carries up to 15 years in prison.

This is not an organized ring, Ms. Ferber said, but some of the men do know each other and "traded" boys or referred the youths to other men.

In some cases the boys decided they enjoyed what was happening to them and sold themselves to one of the men for money, drugs, alcohol or gifts, according to Ms. Ferber.

Investigators have talked to more than 30 boys who were involved with the men, but believe at least 100 youths and possibly more adults are involved.

The case began in December when a school principal noticed a man hanging around his school. He became suspicious when one of the boys went home with the man and notified the Flint police.

No force was used on the boys, but they were coerced into the sexual relations by implied threats, general respect for adults and the prospect of receiving gifts, drugs or alcohol, Ms. Ferber said.

She said it is hard to make cases against persons involved with children because the latter often are vague on details—names, places, time—and are afraid not only of the men but of their families and friends.

That, said Prosecutor Robert F. Leonard, is something that must change: Parents should explain to children that they should not be afraid to tell their folks about odd incidents they may not understand.

He called the case an "absolute tragedy" because gullible youngsters were easily led into what he called "these perversions."

At such an age, Leondard said, some of the victims have an identity problem concerning their sexual relationships and were further confused by the homosexual acts.

He said he consider pornography distracting and demoralizing.

"It is a plague on our community, but I don't think the law and criminal courts are the proper way to deal with it" because of First Amendment rights of freedom of the press, he said.

But, Leonard said, it is a different issue when pornography involves children.

Sexual exploitation of children can be avoided if parents and the public are more aware of what can happen to youngsters, the prosecutor said, and he urged parents to watch for any suspicious activity.

Parents should be suspicious of any unusual or overly active interest in their children by adults they do not know well, Leonard said.

And they should be suspicious if their children receive gifts from adults for no apparent reason.

In the cases his office is investigating, the youngsters were given records, radios, clothes and even a motorbike.

Hard-core porno found in a child's room could also tip parents off that something is wrong, Leonard said; not the typical porno youths are interested in, such as girlie magazines, but literature dealing with what is usually called perversion.

Leonard said parents should not allow children to have too free a rein or spend extended periods—overnight trips, for instance—with adults they do not know well.

"This is a very difficult area," Leonard said, "because we don't want parents to be afraid of natural relationships. But they have to be alert.

Most important, the prosecutor said, children should not be afraid to tell their parents about things that happen to them. They should be made to feel free to report incidents to their parents.

"This sort of thing frightens kids, and it can pervert them." Leonard said. "Parents must make kids understand to respect it without getting hurt and to report it."

There is no indication any of the four men used weapons to coerce the youngsters into sex, Ms. Ferber, said, but it is possible they might have been hurt eventually.

She said one man had fantasies of strangulation, and chocked one boy until he passed out. It took 30 minutes to revive him, she said.

Leonard said the men were dangerous in that they might have become violent if they had thought they were about to be arrested.

For that reason, and because a youngster's story might be a product of an overly active imagination, investigations of this type are confidential, Leonard said.

He said the men most often met the boys when they picked them up hitchhiking, or through one of the boys they already knew.

But, he said, there apparently were incidents where the boys were introduced to the men through educational, athletic or civic programs staffed by volunteers.

Most of these programs are excellent, Leonard said, and are staffed by well-intentioned people doing their best to help the youths.

But, he said, programs involving boys should carefully screen volunteers.

BOY PROSTITUTION RING REPORTED

CHICAGO.—(AP)—Chicago police say an investigation of child pornography has led to evidence of a nationwide organization that allegedly lures runaway youths into becoming male prostitutes to serve wealthy homosexuals.

The ring, headquartered in Chicago, has been sending young boys to all parts of the nation, police said Sunday. The Chicago Tribune reported that police in Chicago, Los Angeles and Dallas are participating in the investigation.

Officers said they were close to identifying six key adult members of the prostitution ring called the Delta Project. Authorities reportedly also are searching for 20 youths connected with the ring.

Authorities said a clandestine newsletter known as Hermes is published in Chicago to promote the ring. The newsletter also allegedly promotes the use of minors as models and actors in pornographic films.

The newsletter says the aim of Delta is "to provide educational, travel and self-development opportunities for qualified young men of character and integrity."

Part of Delta Project was the establishment of Delta dorms around the country. According to the newsletter, "each (Delta dorm) is a private residence where one of our sustaining members acts as a 'don' for two to four 'cadets' . . . The nature of the relationship between the cadet and the sponsor is left entirely to the two of them."

Authorities said Delta Project began in the Cook County Jail last spring when one or more inmates began using the jail's printing facilities to publish the newsletter secretly.

The Tribune said John Norman, 49, a convicted sodomist serving a four-year sentence in the Illinois state prison at Pontiac, admitted that he started the newsletter in the jail while he was awaiting trial on charges of taking indecent liberties with 10 teenage boys.

"This has nothing to do with sex," Norman told the newspaper in an interview at the prison. "I don't want to get young kids involved in sex."

The Tribune said authorities have labeled the "dons" as adults with a sexual preference for children. The authorities claim the cadets are prostitutes, the Tribune said.

The male prostitution evidence surfaced during a pornography investigation that resulted in the arrests of two men Saturday, police said.

The two were arrested for allegedly using two 14-year-old boys in a pornographic movie which they intended to distribute across the nation, police said. The men were identified by authorities as David Berta, 32, and John Bell, 19, both of Chicago.

They were charged with taking indecent liberties with a child.

Books and Magazines

Show Me—Picture book of sex for children and parents, by Will McBride. Explanatory text—by Dr. Helga Fleischhauer-Hardt, $12.95, St. Martins Press, 175 Fifth Ave., New York, N.Y. 10010. Naked adults, teenagers and children.

Bare Boys (2)—Spring 1976, Surreg Limited, Inc., 9465 Mission Park Place, Santee, Calif., 920771. Young boys 12–20 years, all nude photos very little editorial. $4.00.

Boys Exklusiv—Don Busby Studio, 2000 Railton Road, Herne Hill, London SE24. All nude boys 14–18 years old.

Action-Kids—No. 2—Don Busby Studios, et cetera. All boys 10–14 years old.

Best Of More—Album 2—$6.00, Charles Anson, P.O. Box 60092, Houston, Tex., 77060. Nude males 17–22 years, various positions.

Swingers—Amerigala Publications, Inc., P.O. Box 2287, York, Pa. 17405. Photos; male adults; female adults various states of dress with state they reside and type of person they want to meet.

America's Erotic Past—1868–1940, by G. G. Stoctay, Ph. D. A. Greenleaf Classics Collection Edition of Authentic Photographs. Greenleaf Classics, Inc., 3511 Camino DelRio So., San Diego, Calif. 92120. Nude male and females in many and various poses and combinations.

Cheer-Comix For Adults Only—$3.00, Golden Newcomics, Ltd., Printed in U.S.A. Sexual acts as comics with characters shown as adults.

Sex and The Seventies No. 1—$1.95—Ad Publishing Co., 8250 E. Lansing Rd., Durand, Michigan, 48429. Same as Cheer.

Krazy Krotch—Published same as Cheer.

Boy "Howdy" (2)—Published. Department BH, 256 South Robertson, Beverly Hills, Calif. 90211—Paper—males 14–18 years old. Nude—Issue 2, $1.00. Adults only—also Issue 1.

Gay Sunshine—P.O. Box 40397, San Francisco, Calif., 94140 (415) 824–3184. Some nude males—some female photos—many stories. 75 cents Spring, 1975. No. 24—Summer, 1975 No. 25.

Fetish Times—B & D Co., 7109, Van Nuys, Calif., 91406—213-345-2255. Males and females some teenagers—various positions—many stories and ads. Number 19. The World's Most Outrageous Newspaper, Adults only—$1.25.

Go Go Jelly Roll (1)—Monthly Publication of Leisure Goods and Services, Inc., 1540 Broadway. Suite 300, New York, N.Y. 10036. Attention: Eddie Warren—Publisher: Ron Martin, Editor-In-Chief: Eddie Warren. All young male adults, stories and ads—Vol. 1 No. 2—$1.25.

Screw—Milky Way Productions, Inc., P.O. Box 432, Old Chelsea Station, New York, N.Y., 10010—Tel. (212) 741-9060. Men and women, stories, photos, ads, etc., No. 352—No. 368, $1.25.

The Advocate—2121 So. El. Camino Real, San Mateo, Calif., 94403 Tel. (415) 574-7100—photos of young male adults, news articles, many ads. No. 159, Mar. 12, 1975; No. 161, Apr. 19, 1975; No. 180, Dec. 31, 1975; and No. 186, Mar. 24, 1976; No. 82, Jan. 28, 76, Sept. 22, 1976; No. 200, Oct. 6, 1976.

The Hole—3-Finger Louie, P.O. Box 417, Durand Mi. 48429. Issue 12 stories, remainder ads and preview of coming attractions at the various theaters.

Sex In Comics—Greenleaf Classic. Same as above.

Sex Comics No. 1—$2.75. No publisher. Same as above.

Arabian Nights—1428. $3.00 special 2 for $2.00, Golden Newcomics, Ltd., U.S.A.

Male Order—Romulus Publications 437½ Hyde Street, San Francisco, Calif. 94109. Male nudes 16–20 years. Charcoal pad with cut out photos of young nude males 14–17 years.

Climax Number 1—$10.00. No publisher given. Nude adults—various sex acts.

Life-Boy No. 1 and No. 2—Tidsskriftet Coq, Ltd., NorreFarimagsgade 65–67 D K, 1007 Copenhagen K—phone (01) 12 45 11. Young boys 10–17—photos in various stages of dress also boy 4 mag—same as above.

Moppetts & Teens—Issue three—$5.00. Crismund, P.O. Box 1459, Studio City, Calif., 91604. Young boys and girls 8–14 years nude photos.

Kids No. 2—$1.50 Three Acres Press Inc., P.O. Box 567, Midtown Station, New York, N.Y. 10018. Nude boys photos 8–14 years. Special type pad—cut out photos of male and female in various sex acts.

Erotic Art. Drs. Phyllis and Eberhard Kronhausen—Bell Publishing Co., Crown Publishers, Inc., 419 Park Ave., South, New York, N.Y. 10016. Erotic Art has library of Congress Catalog card no. 68–57504.

The Boy—Arco Publishing Company, New York (a photographic essay). Young boys 8–14 years—various photos, few nude, no explicit sex acts shown.

POCKET BOOK—(ONLY FIRST AND LAST WITH ANY PHOTOS)

Teen Boys—Proctor File Illustrated $2.25—Willing Boys—Older sex partners, 5 or 6 artist sketches—Printed in U.S.A.

They Loved Little Girls—Linda Jansen, $1.95, Surreg Limited, Inc., 9465 Mission Park Place, Santee, Calif., 92071, no photos.

Teenage' 69 Memoirs—Curt MacLean, $1.95—Same as above, no photos.

Choice Chicken—Stuart Brown $2.25—Same as above two, no photos.

Truckers Stud Son—Bob Hancock. $2.25—Same as above three, no photos.

Tricking The Chicken—Samuel West $1.95—Same as above Four, no photos.

Chicken Troup—Lyle Jennings $2.25—Same as above Five, no photos.

The Boys of St. Barnabas—Colin Murchison—Greenleaf Classics, Inc., 3511 Camino Del Rio South, San Diego, Calif., 92120.

Bare Knees, Boy Kees—C. J. Bradbury Robinson—Ditto.

Young Thomas—C. J. Bradbury Robinson—Ditto.

School for Lovers—Patrick Doyel—Ditto.

Arabian Boys—C.J. Bradbury Robinson—Ditto.

Sucker Boys—Curt McLean—Greenleaf Classics Inc., 7525 Raytheon Rd., San Diego Calif. 92111.

The Boy Master—Kurt Kimble—Ditto.

Bed Boy—Lyle Saunders—Ditto.

The Boy Keeper—Carl Strater—Ditto.

Jail Bait Boy—F.W. Love—Ditto.

14-Year Old Stud—James Martin—Star Distributors, Ltd., P.O. Box 362, Canal St. Sta., New York, N.Y. 10013.

The Schoolmasters Lust—Paul Stevenson—Ditto.

Timmy's First Time—Marty Ross—Ditto.

Al's Willing Wild Chickens—Buck Wilson—Ditto.

Daddy's Tasty Chicken—Thomas DeAugilar—Surrey House Inc., 6314 Riverdale St., San Diego, Calif. 92120.

Chicken Farm—George Wilson—Ditto.

Pickin' The Chicken—James Duncan—Ditto.

Chicken Lickin' Good—Thomas Roberts—Ditto.

Boy Lover—Harlan Mallory—Greenleaf Classics, Inc., 7525 Raytheon Rd., San Diego, Calif. 92111.

Hard Boys for Teacher—Bruce Baron—Star Distrib. Ltd., P.O. Box 362, Canal St. Station, New York, N.Y. 10013.

Choice Chicken—Steuart Rowen—Surrce Ltd., Inc., 9465 Mission Park Place, Santee, Calif. 92071.

Boy Loves—George L. Close—Neptune Readers, U.S.A.

A Boy for Hire—Robert A. Guy—Printed and bounded the U.S.A.

Mad About a Boy—Jon Marsh Olympia Press, Inc., 220 Park Ave., So. New York, N.Y., 10003.

I Love a Laddie—Greg Anderson—Continental Classics, U.S.A.

It's Show Biz—John Jackson—Parisian Press, U.S.A.

Homosexual Incest—Douglas H. Gamlin, Ph D.—Phenix Publ. Ltd., 3511 Caminodel Rio, South San Diego, Calif. 92120.

Fanny Lushbottom—Fred Engleman U.S.A.—Drawing of proported cartoons—sex acts, U.S.A.

Boys For Sale—A socialogical Study of Boy Prostitution, by Dennis Drew & Jonathan Drake—Foreword by Dr. Andrew Bradbury, Ph D., Brown Book Company, 519 Acorn St., Deer Park, Long Island, N.Y., no photos.

Male International Nude—Don Busby Studios—2000 Railton Rd., Herne Hill, London SE 24 (mag). Nude boys 14–18 years.

For Money or Love—Robin Lloyd, Introduction by Senator Birch Bayh—Vanguard Press, Inc., New York, 424 Madison Ave., 10017. Also published in Canada by Cage Publishing Com, Agincourt, Ontario

Film No. 1—8mm color, no title, no sound.

Film No. 2—Licita Movies—Children Love, no sound.

Film No. 3—8 mm, no title, no sound.

Film No. 4—8 mm, no title, color, no sound.

Film No. 5—8 mm, no title, color, no sound, in box-Color picture, 7 nude 8–12 years old boys on a couch.

Film No. 6—Locita Movies—Children Love, color, no sound.

Film No. 7—8 mm, no title, color, no sound.

Film No. 8.—The Collection—Sweet Sixteen—Color, no sound.

TESTIMONY OF ROBERT LEONARD, PRESIDENT-ELECT, NATIONAL ASSOCIATION OF DISTRICT ATTORNEYS; AND LENOR M. FERBER, ASSISTANT PROSECUTING ATTORNEY, GENESEE COUNTY, STATE OF MICHIGAN

Mr. LEONARD. Thank you very much, Mr. Chairman and members of the committee, and Congressman Kildee.

First, let me express my appreciation for being invited to appear here today and talk about a very important subject matter, always a concern.

Before I begin I would like to introduce the young lady sitting alongside of me. She is assistant prosecuting attorney in my office, and is in charge of the prosecution of the rape and sexual abuse cases in the office, so I think you all recognize that probably she has more knowledge about the problem than I do because she deals with it on a daily basis, so if there are any specifics you may want that I don't know, I am sure that she will have the information for you.

I am here speaking as a prosecuting attorney now for over 20 years and for the membership of the National District Attorneys Association which has over 7,000 members. As Congressman Kildee indicated, we have a National Committee of District Attorneys who are working on this problem of sexual abuse of children.

I might say to you I won't read from my statement. I would not be so presumptuous as to do that. I may allude to certain areas of it, and make some other observations, and I am sure you will have some questions.

But I think that we are here, as I understand it, to make a determination as to whether or not Federal legislation is needed in this area and other areas, and as Congressman Kildee indicated, we support the concept in the bill. We think there is a need for some kind of Federal legislation in this area, and as we will indicate in our comments, we have some reservations, first amendment reservations, that we will bring to your attention that we submit might be corrected. But at the same time I think that we have to also acknowledge that the pornography aspect of this particular problem is really just kind of a spin-off of the real problem. The real problem is the actual abuse of young children.

I think we must address ourselves to that particular problem also and, as was mentioned here and we mentioned in our own statement, there may be a simple solution to it, and that is in the Mann Act just changing the words from "women" to "persons" so that we can deal with the problem of the interstate distribution and interstate transportation of young children.

I think there is another area that we ought to look at. We have been talking a lot about runaways, and we have been talking a lot about homeless children. This has been a problem, and it is a problem in this area, but there is an interesting curious phenomenon that has developed in this area of sexual abuse of children, and that is that we are always looking for the depraved, degenerate, the sick, dirty old man, and I think that because of that looking we have missed a lot of the problem that we have found existing in this country today.

We have found a different type of person who is preying upon young people. In many cases they are wealthy, mobile, educated, sometimes very important members of a community, and as a result they are able to infiltrate organizations and groups which deal with young children, and that is their MOS.

Their method of operation is to infiltrate many of these organizations, and that is where they get access to young children. As a result of that they are able to have an unlimited source of young people, and they exchange them, and that is where we think some laws are needed also, in exchange of young children between these individuals, between States, and in some cases even between countries, Mexico, Canada, the islands in the Caribbean.

We have young people being exchanged, being abused, and in many cases there is no film being taken or being made, or no pictures being taken, but the abuse is there, and it is just as substantial.

So we would respectfully request this committee also consider what might be done in relation to the actual physical abuse of young children, and I might give you a couple of examples of problems that we have as local prosecutors, and as local law enforcement people in dealing with that specific problem.

Because of the wealth of some of these people and when I say wealth I am talking about wealth which permits them to move from jurisdiction to jurisdiction, wealth which permits them in many cases to set up camps, to set up boarding schools, to gain access to young children, wealth and influence which allows them to set up in some cases like in New Orleans boy scout troops in order to attract young children and exchanging with a school in Florida that was sexually abusing children, influence which in my opinion breaks down the usual sensitive response that parents have in turning their children over to certain individuals to afford them recreation such as scouting, such as little league, such as other recreational areas, Big Brothers, and what have you.

Now, I should say parenthetically here that this is not the traditional scout leader. This is not the traditional Big Brother I am talking about. The great majority of the people in scouting and Big Brothers and other recreational areas are well meaning people who enrich the lives of our young people. But they are infiltrated by these types of perverted degenerates, and as a result they prey upon these young children.

I think that we have to develop some kind of legislation to deal with that problem, whether it be requirements by the Federal Government that record checks be made of all people coming in, because, interestingly enough, many of these people have previous criminal records which deal with sexual violations, and they could have been ferreted out if there were record checks made, or there might even be civil penalties suggested if they don't make these record checks to make the organization very aware that these things have to be done.

Again I am not suggesting that the organizations are not concerned. They are concerned. But like any volunteer organization they are always looking for people who come into their organization and assist them, so there may have to be some kind of Federal regulation.

Another significant problem that we find is many of these camps and these organizations are financially supported by the Government. For example, when I say they are financially supported by the Government, I am talking about probate courts, juvenile courts, administrative agencies that have the responsibility of placing runaway children, or children whose parents are deceased, orphans and what have you, and they place them in these organizations, and they place them in many cases outside of their own States, and there is no supervision at all.

The result is the child, once he or she is in such an organization, and it is being funded by the State or the Federal Government in some cases, has no place to go. There is nobody supervising that situation. The court doesn't supervise it. The Federal Government doesn't supervise it. And these children I have to believe must feel just totally alone, no place to go, and then they become sexually abused, and they are preyed upon whether in films or whether they are actually assaulted by these particular individuals in many cases running these homes. We have examples of that all over the country.

The Tennessee case is an excellent example of that. That is a case in which an Episcopal priest was running a camp for young boys, and many of these young boys would come from not only Tennessee but from Michigan. In fact, the case was broken in Michigan. One of the people that was arrested in Michigan for sexually abusing children, who was a counselor in a school, revealed to the prosecuting authorities that this camp in Tennessee existed and had film from this camp, and many of the children whose pictures were in that film were from Michigan. As a result of that the arrests were made. But it was just a happenchance that this individual was arrested in Michigan, and that camp was exposed in Tennessee.

I am suggesting that there ought to be some kind of legislation on the Federal level that would require the Department of Justice, for example, to periodically check those homes to see what is going on in these homes. I think that our children deserve no less. And if that was done it seems to me many of these abuses could be prevented, and at the same time as I suggest to you that pornography is kind of a spin-off of this problem, if you are going to deal with the whole problem of child abuse, sexual child abuse, as I am suggesting, we have to deal with the pornography problem because this is a necessary ingredient to many of these perverts, and this is the way they earn their money, this is the way they keep their organizations going, this is the way they interchange information relative to what children are available, how they switch these children around, and exchange them. So it is important it seems to me to have legislation that will deal with not only the actual abuse of the child, but also the pornography problem itself.

So I am sure you have some questions, and I am sure that you may have some comments that you want to make. I won't continue at this time, but be available to answer any questions you may have.

Mr. CONYERS. We want to thank you. We have a very good statement that I would recommend to all the committee to consider carefully if they haven't already.

Mr. RAILSBACK. Mr. Chairman, can that be made part of the record?

Mr. CONYERS. It has been already. Thank you.

I have a whole list of questions here. Let me just run through the questions that you stirred in my mind through your very excellent statement, and you can answer which ones you want, and maybe other members of the subcommittee will go into detail.

I am interested in the organized crime involvement in the production of pornography, and I am thinking now of juvenile detention facilities, many of which are a source of initial homosexual contact that may predispose children to get moved into the kind of activities that you subsequently described. I am interested in specifically the first amendment problems that you may have as the Congress begins to look at this area. Let's stop at those.

Mr. LEONARD. All right.

Let me first address the organized crime aspect of it. I think I can say from my own experience and from the knowledge that has been imparted to me by other district attorneys on the committee, such as Mr. Carey from Chicago, Mr. Freitas from San Francisco, and others, that we have not been able yet to detect the involvement of organized crime as we understand it, that is, the so-called syndicate and what have you.

Certainly it is organized in the sense that these people exchange young boys and young girls, and exchange films and pictures, and travel throughout the country making these exchanges. So it is organized in that respect. Also the magazines and books have reference to individuals, organizations, and locations of people who can provide this information, so it is organized on that basis. It is organized in the fashion that I described in the New Orleans case in which four of the people have been convicted as of last Friday, where they formed the scout troop in order to have access to young kids and then exchanged them with a school in Florida that was involved in the same kind of activities.

Again, many of these youngsters came from homes where there were parents in the home who were just misled into believing that these youngsters needed some help, and this particular school would provide them that help, and in many cases the funding was provided by those wealthy people who were involved in the degenerate activity. In other cases the parents themselves paid for the children going to school, and in other cases the Government provided the funding. So what happens is that the Government in many cases becomes an unwitting participant in some of this activity. I think that is all I can tell you about the organized crime feature of it

I would add as a footnote based on my experience with organized crime if there is any money in this, which apparently there is, you can be sure I think that eventually if we don't stop it or confront it that they will become involved in it.

Mr. CONYERS. I want to tell you about my surprise at this kind of recitation. It comes to me as a distinct shock that organized crime would somehow not be in presence in full force in the pornographic industry in this country. I mean why on earth wouldn't they be? Here is a prime field, high profit, apparently difficult to prosecute for the reasons that bring us here today. Wouldn't it be fair to say, Mr. Leonard, that maybe your association hasn't detected or established it——

Mr. LEONARD. I think that is a fair statement.

Mr. CONYERS. But it seems to me for us to be meeting here to question whether they are there or not, the question is degree. If that is bothering the subcommittee, I am sure it will be clarified in the course of these hearings.

Mr. LEONARD. I might say if I may, Congressman, that I think that is a fair statement to make, and I was going to make that myself because actually the committee that I talk about was formed about 2 months ago, and we are really just getting into it.

All we have seen now is some of these people that I have described to you that have been generating this kind of activity, but I believe, like you do, either they are in it or they are going to be in it because there is tremendous profit, and as you say, it is very difficult to detect them, and the distinct problems that we in local law enforcement have in pursuing these cases, for example, if a local law enforcement official attempts to make a case on an individual who jumps from one State to the other, and this is happening all the time in these particular cases, it is very difficult to try to gather together the resources that that local official has so that he or she can subpena witnesses from other States.

That is one of the reasons why we think the Federal Government would be much more effective.

We have had a number of examples of that problem where, for example, in the New Orleans case the person ran to Boston after he was charged down there, a flight warrant was issued by the FBI, and all of the procedure was instituted to get him back, and in the process of doing that he skipped to someplace, where we don't know, and probably some foreign country. We think he skipped to a foreign country. It is our belief that if the Federal Government was involved right in the very beginning and could have executed warrants against him for Federal crimes, that this individual would be in custody today, but because of the jurisdictional problems we have we weren't able to prosecute him as yet.

In regard to the second question, I think you asked——

Mr. **Ertel.** If the gentleman will yield on this point just a moment, I think maybe what we are talking about are a couple of different things, Mr. Conyers, and if I might, maybe you are talking about pornography as such, if organized crime is involved in it.

Second, we have the issue of child pornography, which may or may not be organized crime.

And, third, we have the sexual molestation of children which maybe isn't as profitable as the pornography situation. Maybe the illustrious district attorney, and I happen to be a member of his Association, formed 4 months ago, is referring to child pornography where he does not believe organized crime is involved, but in the pornography field they would be. In the child molestation field, which is entirely different, that is probably not organized because that has a lot of overtones to the wealthy individual, the individual who molests children.

We are talking about apples and oranges. Maybe that is why we are not communicating. I am just suggesting we are not breaking it down fine enough.

Mr. **Conyers.** My reference went to pornography in a general sense.

Mr. **Leonard.** I am sorry. Then I misunderstood. There is no question that organized crime is involved in the distribution of pornography in general. There is no question about that.

We have not seen it yet, I am saying, and I don't know, but that doesn't mean they are not involved in the commercial sex exploitation of children in pornography. We have not seen it yet. It may very well be there.

Mr. **Conyers.** Very good. I am glad the gentleman from Pennsylvania clarified this discussion.

Mr. **Leonard.** I think there was a question regarding the juvenile detention centers about this kind of activity.

Mr. **Conyers.** Yes.

Mr. **Leonard.** I think that that is a problem, those centers and how they are handled and the treatment of young people in there. That has been an unending confrontation and discussion between police and prosecutors and the public and the courts.

I really frankly don't know the answer to that. I suspect it has a lot to do with supervision, better supervision. I think that there is, like in every governmental agency, a lot of money spent and wasted that could be better utilized in this area. I don't want to suggest that there ought to be more money spent here, but I think that that might be the only way to deal with that problem.

I think that many of these young people who ultimately become involved in the sex offenses or the commission of sex offenses against them are young people who have been in these centers and have learned for the first time in those centers the involvement with homosexual activity.

I am sorry, Congressman, the third?

Mr. CONYERS. The first amendment problem. I think that while we have the author of this bill here, a dear friend of all the committee, that we might as well examine that problem from your point of view as a prosecutor.

Mr. LEONARD. Let me just say so no one misunderstands my position on obscenity, and I don't want to be thought flying in false colors here, I am basically opposed to obscenity laws that would restrict any adults from the reading or viewing of films or pictures. I think they are basically violations of the first amendment itself.

I also feel it is a very low priority in my office, that I have many other problems to deal with, and as far as what adults read and view, that is something that should be between them and their own conscience.

With regard to child pornography, it is a little different situation as far as I am concerned. I think that it does have an impact on young people first to be exposed to this kind of reading material and film, and especially if they are at a very impressionable stage in their life, usually even before they are 14 years of age.

I think according to the psychiatric information that we have acquired it takes a great deal to flip a child from heterosexual concerns to homosexual concerns when it comes to film and things like that unless they are totally preoccupied with it. But, on the other hand, that is not necessarily true with the actual abuse itself, with the sexual abuse itself. That I think with the young child who really hasn't fully developed emotionally and sexually can flip a child and cause him to go in a different direction than he would have if he were not exposed to this kind of sexual abuse.

So I think that though there is a need to protect children from viewing this material, but I think the whole thrust of this law, and of course the author is here, and he probably can correct me if I am wrong, the whole thrust of this law is not so much as to providing such material to young children, but to try to prevent the development or the filming, or the photographing of young children, making that a crime, so that they will not become involved in not only the commercial sex exploitation but the actual sexual abuse itself. I think for that reason that the law is very important.

As I mentioned to you, we have some concern about the first amendment issue. We have discussed it with Congressman Kilde[illegible] and his aides. I have reference to, for example, the all-inclusive terms, or certainly could be interpreted that way, relative to whom could not film, for example, simulated sexual activity, or sexual activity.

As I mentioned in my statement, I have some concern about documentary film makers, anthropologists, and people like that who may legitimately be taking film or making film and pictures concerning certain activities that might be interpreted to fall under this statute.

I think that all I am saying is I am not saying it would. I am just saying we ought to consider the statute in light of that concern.

I think that there is another concern in regard to holding bookstore owners responsible, for example, of knowing how old a child is in the pictures in the book. Let's suppose that the book depicts a picture of a child in the nude, or engaged in any kind of sexual activity, or at least it appears to be a child, while if the child were over 16 or whatever, the bill suggests, he would not be violating the law, and he would be protected under the first amendment. It seems a heavy burden for him to be held responsible to determining whether that child is 16, or 17, or 15.

I understand that Dale has indicated, or one of his aides has indicated, that they are apparently making some changes in that aspect of the law to put it "knowingly," and I think that is very important to the bill itself. I just became aware of that.

Mr. KILDEE. We don't claim that my bill itself was written on Mount Sinai, although I would say that I think these acts were covered on Mount Sinai, but my bill certainly is something that any committee has a right to repolish as we have ourselves, and I think very concerned people have raised some questions that have made the bill better than when we first drafted it. I am open to any suggestions.

Mr. CONYERS. My last question along this line is there is nothing in your bill that would make prosecutable the viewing or possession by someone who is not knowingly receiving it for the purpose of sale or distribution, so that that part of the constitutional question that I raise would seem to be avoided by adding "knowingly" in section 2.

Are you aware of the Comstock law, the Federal law that prohibits the shipment of obscene material in interstate commerce?

Mr. LEONARD. Yes.

Mr. CONYERS. Which was the subject of the Supreme Court decision that was released only yesterday in which the conviction under that law was upheld arising out of an Iowa case. Do you have any observations to make about that? How does that differ from what we already have?

Mr. LEONARD. On the Comstock bill?

Mr. CONYERS. Yes.

Mr. LEONARD. Frankly, I am not familiar with the language in the Comstock bill, so I really won't be able to address myself to that.

Mr. CONYERS. It deals without referring to youth and sexual abuses, but obscenity in a general way, which suggests the more specific question that maybe this kind of conduct might be presently punishable under the law, which is really the question that this committee has to examine very carefully. We will have the Department of Justice representatives here to join us in making that analysis, but do any of you have any comment on that?

Mr. LEONARD. I am not sure about the penalty in the bill.

Do you recall what the penalty was under the Comstock bill? The reason I ask is that you may want to deal more severely——

Mr. Conyers. We have 5 years or $5,000, and/or.

Mr. Leonard. My thought is that you may want to deal much more severely with the sex exploitation of children than you will in just the transportation of pornographic material, and I would suggest that your bill does deal more severely than 5 years.

I might also add that in my statement I mention that we have been working with the Justice Department in relation to these cases, and Mr. Ben Civiletti, who is very interested in the area and has talked to me on a number of occasions relative to the matter, tells me that he has approximately 20 to 25 cases that he is aware of that the Postal Division and the FBI are working on, that deal primarily with the economic sex exploitation of children, photographs and things like that, but they are working with us, and I know they are very interested in this area.

Mr. Conyers. Mr. Railsback, do you have any questions?

Mr. Railsback. Yes, I do, Mr. Chairman.

Mr. Leonard, I want to thank and congratulate you for what I think has been a very good statement, and I want to ask you some questions and ask you if you can to try to make your answers as short as you can, because I don't want to deprive any colleagues. But I think with your expertise we would be remiss if we didn't ask you some rather practical questions.

To what extent has it been your experience or Miss Ferber's that drugs have been kind of an ancillary or incidental problem in child abuse?

Mr. Leonard. In child abuse or the sexual child abuse?

Mr. Railsback. Sexual child abuse.

Mr. Leonard. I think it has been a significant, plays a significant role in many of the cases, because once these people are so depraved when they are involved in this kind of activity that there is no end to which they would not go, and we found in a number of cases drugs and even narcotics were involved. So I think it does play an important role in many cases.

On the other hand there were numerous cases in which, if you can use the term integrity, these people had some, some of these people had some integrity about the use of drugs. I use that word very, very loosely.

Mr. Railsback. Miss Ferber, what are the problems in actually prosecuting a child exploitation or a child sexual abuse case? Can you very quickly catalog some of the problems that you have?

Miss Ferber. Yes. The problems are children have poor perceptions, poor memories. As the first witness mentioned, they don't want to come forward; they have a relationship with these people sexually abusing them, and they don't want to jeopardize it. They have no one to whom to go to complain. They are runaways and sometimes status offenders, but the committee I think wants to hear what special problems Federal legislation could solve, and I think any abuse that occurs in the State, which a county, local prosecutor would have jurisdiction over, because of the new nature of the offender, that is the mobility, the financial resources; any crime, sexual offense, would be much more likely now to have interstate ramifications.

The problem is both with the abuse and with prosecuting anything relating to the depiction of the abuse, in other words, the production and the distribution of this literature.

Mr. Railsback. May I interrupt to ask either one of you, as I read the bill and I give credit to the author of the bill for his interests and for what he is trying to do, I am not at all certain that we cover, for instance, the transportation interstate of a child for sexual purposes; in other words, it seems to me we may want to include a provision that would either amend the Mann Act or get to that particular problem.

Do you agree with that?

Mr. Leonard. Yes. I think the bill is primarily concerned with the transportation or distribution of pornographic materials, and that is the point of my actual comments. I think we have to begin really to deal with the issue of child abuse as well as the distribution of the results of the child abuse, which are the pictures and things and that may be where we can very simply amend the Mann Act to cover that.

Mr. Railsback. I would agree with that.

Let me ask you, can you make available to the subcommittee or are you willing to make available to us any reports that maybe come to you as a result of our task force's study?

Mr. Leonard. Absolutely, sure.

Mr. Railsback. I think that information would give us an idea as to the extent and scope of the problem. I think it would be very helpful.

Mr. Leonard. Fine. I would be very happy to do that, and I am sure the other district attorneys would feel the same way.

Mr. Conyers. Would my colleague make that available to the subcommittee so we can put it in the record?

Mr. Railsback. Yes, if I can amend my request, I will make it for the subcommittee.

Mr. Conyers. Thank you very much.

Mr. Railsback. That is all I have, Mr. Chairman.

Mr. Conyers. Thank you for your questions.

Mr. Volkmer, do you have any questions of the witness?

Mr. Volkmer. Yes. I would like them to just direct themselves to the problem briefly, if at all possible, to the accessibility to the victims of cooperation by victims in prosecution, and the problems in the prosecution of these types of cases, if you would.

Mr. Leonard. The first witness mentioned that it's extremely hard to locate these victims, and I would definitely concur in that. We had many of our cases result from an alert assistant principal who saw these men who ultimately became defendants hanging around the school. The children did not come forward. It's very, very rare they ever do.

If you find some pornographic material in your jurisdiction, it is virtually impossible to recognize any of those children depicted in the literature as being from your county or from your State even. The last four pages of the exhibit packet that you have lists about 75 pieces of literature that we confiscated from one defendant in Michigan, and none of the material was produced in Michigan.

So, wherever that material was produced or wherever it's found, the chances of finding the victim are very, very, very small.

Miss Ferber. I think that is why we suggest Federal legislation would be very helpful in this area. You can turn it over to the FBI.

Mr. Volkmer. Now the first witness, Detective Martin, also addressed the problem of perhaps trying to have some legislation that would aid law enforcement in getting perhaps the identification of some of these victims.

Miss **Ferber**. Let me just say before I answer that or Mr. Leonard does, that I think perhaps California is an unusual State in even having a law that would enable them to prosecute for the distribution or the producing of pornographic material. Michigan does not have such a law; child photography I am talking about.

Mr. **Volkmer**. You just have a regular child abuse law, and delinquency laws?

Miss **Ferber**. That is correct, and to my knowledge only six States have statutes regulating the commercial abuse of children, the commercial aspect of it.

Mr. **Volkmer**. If we agree that the first amendment may permit distribution of the material, but does the first amendment prohibit requirements as to what persons, like labeling as to who is the producer of that or identifying the persons in it? In other words, you see a regular movie, do we know who all of the actors are? What if that were required and make it a felony offense if that was not in there?

Mr. **Leonard**. It presents an interesting constitutional question and legally whether or not first you could require them to do that and second, if these people are engaged in surreptitious activities to produce these films, they are certainly not going to put their names on it and identify it. I think you can get at the problem without the necessity of requiring that in the law, because you are going to be going after people who are violating laws.

Mr. **Volkmer**. I agree on that.

Mr. **Leonard**. To suggest they will sign it, I don't think is very realistic.

Mr. **Volkmer**. If it is unsigned or unidentified, it would be illegal.

Mr. **Leonard**. I understand that, but I am just saying I wonder if it's just a law that really isn't necessary, because you probably should go one step further back and say the activities of even producing the film are illegal.

Mr. **Volkmer**. All right, but the distribution——

Mr. **Leonard**. Usually the distributors in this case are the people who make the film.

Mr. **Volkmer**. Not necessarily, though.

Mr. **Leonard**. I don't think it would necessarily do any harm, but I am just wondering if you are enacting a law just on the books, nobody would pay any attention to it anyway.

Mr. **Volkmer**. Let me ask you another question: On the cases that you have had so far, what has been your experience and success in convictions?

Miss **Ferber**. The cases that we have been successful at the State district court, preliminary example, we have been able to get articulate, for the most part, intelligent victims who were able to put in enough evidence.

We have had no trials to date. We have had two defendants plead guilty as charged.

Mr. **Volkmer**. On plea bargaining?

Miss **Ferber**. They plead as charged, so I wouldn't necessarily call that a bargain.

Mr. Leonard. I might say in the other jurisdiction where cases have developed such as New Orleans and Virginia and some of the other places there has been successful prosecution. Generally if we can get the witnesses to come forward, especially in these types of cases, there are usually more than one, and that adds credibility to the individual youngster who is testifying if you have four or five or six of them that can testify, and they are generally charged on this count, so you are able to do that.

Mr. Volkmer. Thank you very much.

Mr. Conyers. Mr. Gudger, do you have questions of the witness?

Mr. Gudger. Very limited.

In the State of North Carolina we have still on our books—and it has been held constitutional—the criminal offense of crime against nature. It is written in statute laws in very ancient terms, "abominable and detestable crime against nature shall be punished by imprisonment up to 60 years." In many States this statute or statutes of similar import have been either reduced or a defense of consenting adult has been written into the statutes or at least implied in the courts.

Now, you don't have a consenting adult when you have a child. What is your situation in Michigan with respect to the use of these statutes and what is the present status of these statutes?

Mr. Leonard. We have a new criminal sexual statute in Michigan, and it has pretty well eliminated all of these other statutes, and it does cover abuse of the child, sexual abuse of the child and the penalty could be substantial. We can locate the individual in the State and prosecute the individual in the State.

Mr. Gudger. Mr. Leonard, I come from one of those six States which has adopted statutes dealing with obscenity with reference to children, suggesting a somewhat different standard to be applied by the trial jury which determines whether or not there has been a violation of the pornography or obscenity statutes.

However, North Carolina, with this fairly progressive addition to its statute law in this field which was enacted in 1975, has not gotten down specifically to a definition of what publication or pornography is a violation of law, because it contains nonheterosexual depiction of children.

Do you feel we perhaps need to have the States approach this problem of defining specifically what is to be obscenity or pornography involving children? I am talking now of the States doing it rather than the Federal statute doing it, and then perhaps the Federal statute dealing with the transportation in interstate commerce.

Mr. Leonard. Congressman, that is a very difficult question in the sense that certainly States have an obligation in this area, and should be meeting that obligation.

I think the question is whether or not as far as the citizens of the various States of this country can be better protected, we have a Federal law or individual State laws.

I am always a little concerned about when you get to such areas as pornography having individual State laws. That would cover, if we can have Federal law, because I keep thinking of the Supreme Court decisions that have come down which, depending on what community you are in, whether you will be held guilty, be made guilty of a crime for reading or distributing one book in one community, and not guilty of a crime in distributing in another community maybe 50 miles away, that has always bothered me. So the only thing I can say is I think there is a need for Federal legislation in this area, and this bill I think would meet many of the problems that we have seen relative to the commercial sexual exploitation of children.

I still think though the States have some responsibility. I would not say to you the States should have the only responsibility. I think there is a Federal responsibility also.

Mr. GUDGER. One final question, Mr. Chairman.

Mr. Leonard, do you see that the photographing of a child engaging in any of these acts prohibited in the first section of this bill, ipso facto, and by that mere set of circumstances presumes that the photograph is going to be transported into interstate commerce or distributed on a national market? If it does not, don't we have to ask the States to act with respect to it?

Mr. LEONARD. Yes. I think from a Federal standpoint, as far as the Federal enforcement, there has to be some way of either showing in interstate commerce or the presumption has to be set up so it's not unconstitutional. In other words, the presumption has to be reasonable it will be distributed in interstate commerce. Maybe this person we can establish after he is arrested, say in North Carolina, with a large number of these films, that we can show that his business from his books and records would indicate that it's almost all sold out-of-State. This would be, I think, a reasonable presumption that he was going to sell these out-of-State, and we could go to court on that basis and it would be constitutional.

Mr. GUDGER. Thank you.

Mr. CONYERS. Mr. Ertel, do you have questions of the witness?

Mr. ERTEL. Thank you, Mr. Chairman, I have a few.

Mr. Leonard, I appreciate your comments. You have covered quite a broad range of activity beyond the bill we are discussing.

One of the things you did discuss was the Mann Act, and amending it, but I wonder, has the Mann Act ever been or has it been used or utilized within the past few years for the interstate transportation of children, female children, which would come within the Mann Act? Are we looking at a problem where there may, in fact, be statutes which could be utilized, and there has been no high priority by police departments or law enforcement officials to prosecute?

Mr. LEONARD. I think I really have to plead ignorance to whether or not there has been any enforcement of the Mann Act as it relates to young females. I would suspect there must be some cases around the country it has happened because the Mann Act has been used rather frequently, I think less frequently today than it was 10 or 20 years ago.

When you are dealing with pedophiliacs who are these people that prey upon young children for sexual gratification, you have to include both young boys and young girls, and I think if the Mann Act, in my opinion, if you merely amend the Mann Act to cover that area of women and substitute the term "persons," I think you would cover all of the problems that we are talking about as it relates to the actual abuse itself.

Mr. ERTEL. In other words, by doing that, you are taking care of the one area we talk about, the child abuse in interstate transportation, as far as the Federal Government is concerned, we have had that pretty well covered and covered most of the antisocial activity with children.

Mr. LEONARD. The physical abuse of them, yes, I think it would. That is my opinion.

Mr. ERTEL. I guess we then have to go to the next issue in the problem which is: Will it be enforced? Will, in fact, Federal law enforcement officers make that a priority item? Since we do have the Mann Act on the books, at least it covers half the population, and includes children. If that is not being enforced, how do we get a priority?

Mr. LEONARD. I think my experience with the Justice Department and Mr. Civiletti, as I mentioned, would indicate they are very interested in that. That is why I would suggest that the responsibility for the enforcement of this law, if you can legally do this, be imposed on the Justice Department, first because I think they have or they can establish the resources and the mechanics to do it, and second, I think they are predisposed to do it now, and I think their attitude is they want to do something about it, and my experiences with the FBI would indicate that they are anxious to become involved and to do something about it, and I also feel that if the Congress of the United States, as you are here conducting these hearings, indicates to the Justice Department and indicates to others they feel very strongly about it, that something would be done.

Mr. ERTEL. If I might turn to another point of your testimony, you indicated at one point that there was very low observation or surveillance or review of records for people being employed with young children.

I wonder about that, because we do have a uniform crime reporting system, the FBI wrap sheets, and as a prosecutor I used to get routine requests to check somebody's record who was being employed in the Boy Scouts or somebody else.

I just wonder, is the reporting system good, and how far you can go in that area before you start impinging on the rights of innocent people by raising these issues?

Mr. LEONARD. I think the procedure you talk about that you have experienced in your own community as a prosecutor is not the general procedure in this country. In fact, we have had to call in all of our organizations that I have mentioned to you and sit down with them and again say to them we offer you whatever help we can in relation to these checks, keeping in mind that we can't put somebody full time on it unless it becomes absolutely essential, and then we have to go and get funding and everything else, but we would like to help them.

What I am suggesting to you is that this be made a requirement of the agency, and that the individual, when he or she is applying to come into the program, be advised that this will be done, and that they have the free choice of either saying fine, we want to go into the program, and we have no concern about the record check, or question, we do object, and if they do object, then they shouldn't be taken in, and I think that will discourage a lot of those people from getting involved.

You raise, I think, the real issue, which is how far you can go before you impinge on somebody's right of privacy, and I think that is a very important question, and I don't have the answer for it.

Mr. Ertel. Are you suggesting Federal legislation in this area, specifically we are dealing many times with church groups, we are dealing with volunteer organizations, Boy Scouts, we are dealing with schools, private schools, public schools, anybody that deals with children, you are talking about a very broad spectrum, and are you suggesting Federal legislation to do that?

Mr. Leonard. I am suggesting this should be considered to see whether or not it's feasible. I don't know if it's feasible. I think it should be considered, and in those areas where the Federal Government has authority to do it, such as providing Federal funding in many of these private organizations, that this could be done legitimately under Federal requirements?

What I am saying to you is I recognize——

Mr. Ertel. May I interrupt a moment? Then are you going to preclude anybody who has had a sex offense, even though they may have gone through some rehabilitation status or some sort of the psychiatric care, from taking a job?

Mr. Leonard. I think that decision ought to be made by the volunteer organization that has requested or that he or she has requested to join, and I think that should be an independent decision that you make. I would say this, that if I have a child that was going into the Boy Scouts and that Scouting organization determined one of the volunteers that would be working with my child had a serious sex offense, I certainly would not want my child in that Scouting organization, if, in fact, that individual was taken on.

Mr. Ertel. I appreciate your comments on that, but I just wonder how much you are going to have the Federal Government intrude into private organizations, into church groups, and what kind of statute could be drawn. Certainly we have a separation of powers, we have a separation of church and State, we have a lot of separations, and just how much intrusion you are going to have the Federal Government do, and, second, the bureaucracy that is going to be created to do that.

That gives me some very serious problems.

Mr. Leonard. It does me also.

Mr. Erdel. I would like to know if we are going to, how we are going to draw that legislation, if that job is ours.

Mr. Leonard. I am not saying it should be withdrawn. I just say there is a possibility that should be investigated. I think the question of intrusion on the one hand is involved, and the question of protecting youngsters from sexual abuse, and I don't want to get inflammatory and suggest that is really the issue.

I think it's part of the issue. I think when you look at the cases we have run into and district attorneys are running into all over the United States, and we recognize that these deviants and perverts use these organizations to gain access to young children, I think we cannot ignore that fact. So I am saying to you when we begin to talk about legislation, shouldn't we consider some kind of legislation that will deal with that problem?

I only throw out the record check because I know many of these people have previous criminal records, but then at the same time, many of them don't, and the record check would be no good.

Maybe we would have to consider, for example, how much of the record check or how many people would be ferreted out in the record check. If we find only about 2 or 3 percent and we have set up a tremendous bureaucracy to do it, it may not be worth it. Maybe we will have to go someplace else. I only suggest we consider it, and I am concerned about the problems you raise.

Mr. ERTEL. I appreciate your comments very much.

Thank you.

Mr. CONYERS. Thank you.

This is an all-purpose question that we close with, because I won't have to repeat it to our witnesses from the Chicago Tribune or the American Civil Liberties Union if I say it now.

There are vast numbers of children and youngsters who are, in effect, throwaways, castouts, rejected in our society and therefore, vulnerable to all kinds and forms of victimization, and I refer to 500,000 children in homes and institutions for dependent and neglected children, another 500,000 children in detention centers, jails and training schools, 250,000 in foster care facilities, plus the general estimate of about 1 million runaways a year, I refer back to your opening remarks, Mr. Leonard, which I think put this subcommittee back on track, that the problem is not just a youth abuse in porno, but it's youth sex abuse, and this goes to the vulnerability of literally millions of children who are potentially exploitable because our society hasn't tuned in on all of the other related problems that put them into a state of predisposition.

What are your reactions?

Mr. LEONARD. That is exactly the point, and I think we have to begin to deal with the problem of the abuse of children, but we have to, as you suggest, know where they are coming from. Certainly the runaways, certainly the court-placed children in many cases, certainly all of the administrative agencies that have anything to do with children on the one hand, and on the other hand, as I suggest to you, young children, all children in this country who have legitimate interests, whose parents are concerned about them, who live at home, who have a model life, who go to school, who are exposed to organizations who are infiltrated by these perverts and deviants, we have to be concerned with that, and I think we have to recognize that in itself is a problem.

We can enact all of the laws in the world here in this country, but——

Mr. CONYERS. We sometimes try to.

Mr. LEONARD. Yes; but I think we fool ourselves if we think that by enacting Mr. Kildee's law, which is I think necessary, or any of the other laws we talked about here today, it is going to solve the problem. The parents in this country must recognize that these people are in their communities and are preying upon their youngsters, and I think they must become more involved and they cannot be just summarily turning their children over to organizations without knowing what is going on in that organization, and themselves becoming involved in the organization.

It's a total problem, as you suggest.

Mr. CONYERS. Does our colleague from Michigan desire a last word?

Mr. KILDEE. I want to thank you for having Mr. Leonard and his colleague testify. I think the committee has had very good hearings, and as I state, we are certainly interested in having a bill that meets the real needs.

I would like to add just one thing: You do raise a very good question, Congressman Conyers, on those who are more liable or more prone to exploitation, but I do know, and I know prosecutor Leonard will indicate in our community some of the children who were abused did not fit that pattern, that these exploiters of children really might find it easier to exploit those who are some prone, or in a position of not having a strong family life.

It's amazing really how comprehensive the victimization is. Some come from homes where there is even a deep religious background in the home, and the parents are very careful about their children and think they have put them into a setting where this cannot happen.

Mr. CONYERS. In other words, you are suggesting it's hard to profile the abuse, the abuser and the abuse. It's very difficult to draw a clear profile on either of them.

Mr. KILDEE. I think that is true, and I think one of the reasons it is true, Mr. Chairman, is the phenomena of great mobility. When I was being raised not too many years ago, my parents generally knew I was right in the neighborhood, but now we have great mobility among young people. They can move from one town to another outside of the area, and this is done for legitimate reasons, but because of the mobility they are becoming more prone to approaches by people that have less than legal motives.

Mr. CONYERS. As the subcommittee has said, we are, indeed, grateful for your legislation, Mr. Kildee, and for your joining us, Mr. Leonard and Attorney Ferber.

Mr. LEONARD. Thank you for having us.

Mr. Gudger Mr. Chairman, I wonder if I might make a brief observation for the record, and that is this:

Mr. Leonard has been an outstanding public servant. He has served as his district attorney in Flint, Mich., with great distinction. He came before the Solicitor or District Attorneys Association of my State some 2 or 3 years ago at a meeting which I attended, and there spoke to matters of significant public concern, including juvenile delinquency and juvenile problems on which he had become an authority.

He also testified, and I was present there in Houston, Tex., at an undertaking called, Operation Impact, sponsored by the Association of Junior Leagues of the United States, and there demonstrated his special knowledge in this field of juvenile delinquency and juvenile corrections.

I want to say that I commend Congressman Dale Kildee in presenting this very qualified witness before this committee.

Mr. LEONARD. Thank you very much.

Mr. CONYERS. I am sure the committee joins in that accolade.

Mr. LEONARD. Thank you very much.

Mr. CONYERS. Our witnesses are now from the Chicago Tribune, who in some respect should be commended for causing the Congress to take this minute concern about the subject.

I call Mr. George Bliss and Ms. Michael Sneed to join us at the witness table at this time.

TESTIMONY OF MICHAEL SNEED, GEORGE BLISS, AND RAY MOSELEY, REPRESENTING THE CHICAGO TRIBUNE

Mr. **Bliss.** Mr. Moseley.

Mr. **Conyers.** Please identify him and then whichever of you would like to begin the discussion may proceed. We welcome you before the subcommittee.

Mr. **Bliss.** Ray Moseley, and Miss Sneed will be our spokespeople.

Mr. **Conyers.** All right. That seems like a gentlemanly way to proceed.

Ms. **Sneed.** Thank you for appointing me spokesperson.

Gentlemen, thank you first of all for having us here. I would also like to commend Michigan for their active investigation of child pornography, and Sergeant Martin, who has been very helpful.

I will give you a brief synopsis of what the Chicago Tribune has done. The Chicago Tribune began an investigation of child pornography and child prostitution last February following legislative hearings in our State. The Chicago Tribune attended these legislative hearings during which child pornography was first brought to the fore.

During the attendance of these hearings we discovered that child pornography was in fact available in the Chicago area. We were not aware of this. We were horrified and shocked that this material was available.

Mr. **Conyers.** These were State hearings?

Ms. **Sneed.** These were State hearings in Chicago on obscenity and the legislature at that time was trying to decide exactly what they were going to do with our lack of obscenity laws, and they almost concluded their hearings whey they discovered that child pornography was in fact available in the State of Illinois.

We looked at the materials that were presented and were horrified at what we saw, shocked. It was based on this that we decided to investigate to find that, No. 1, were these materials in fact published in the United States, or were they from Europe, and, No. 2, were in fact American children becoming victims of this very lucrative form of child abuse.

Based on this we traveled to New Orleans, to Los Angeles, all over the country, trying to determine answers to our questions.

Mr. **Conyers.** You should be glad no Members of Congress were there because that would have called for the greatest international travel that we were capable of. You didn't go overseas?

Ms. **Sneed.** No; we did not, although we certainly did interview people who had gone over.

Anyhow, it resulted in a four-part series that was published in the Tribune May 15 to 18. We interviewed police officials, child pornographers, and child victims in various parts of the country. In Chicago in particular, we worked very closely with the Chicago Police Department in their own investigation, and accompanied police officers on a number of surveillance missions, and were also there during the arrest of two pornographers caught in the act of making a pornographic movie.

I might add in Chicago our investigation recently centered on pornographers, the victims, actually young children that were being filmed. We also identified the victims and questioned them, and were able to locate an actual place where the films were made.

We also were able to purchase pornographic magazines and films from our so-called adult bookstores in Chicago, and interviewed experts in the fields of psychiatry, sociology, and law. We believe the Tribune investigation is probably the most extensive that has been made into this problem in the United States to determine whether it is nationwide in scope, and we believe we have established conclusively that child pornography and child prostitution, which are inextricably tied to each other, are multi-million dollar industries exploiting thousands of children as young as 3 years old, operate without benefit of an overall organizational framework but through the connivance of groups of individuals in various parts of the country, and I believe the Michigan prosecutor did an excellent job of explaining this.

The child exploiters maintain liaison with one another through so-called "boy love" newsletters and share their child victims. They also have had some success in obtaining Federal, State, and county funding for phony child-care institutions set up as fronts for their illicit operations, which again was brought out by the Michigan prosecutor.

Following are some of the major findings of our investigation. I believe this personally is very important to you gentlemen:

John D. Norman, a convicted sodomist, is now serving a 4-year term in the Illinois State Prison, and I might add he is eligible for parole very soon, heads a nationwide ring that sends young boys across the country to serve a network of pedophile clients.

A Norman mailing list of more than 30,000 clients was seized by the Dallas police in 1973 and forwarded to the State Department in Washington, D.C. According to the department officials, the list was destroyed, entirely destroyed, after it was determined that the names on the list were not found or used in any passport fraud violations. The department has given no explanation as to why the list was not turned over to the FBI for further investigation.

In explanation of this, John Norman, as Lieutenant Martin pointed out, has been working since 1955 using various names of organizations, specifically designed to send children across State lines to serve clients. His children were called Cadets. His clients were called Dons. The homes they were sent to were called Delta dorms. He had a newsletter that he would send to subscribers telling them when these people could be available. This index card contained 30,000 names of Dons, Cadets, et cetera. These were the cards that were in fact destroyed by the State Department. We have in Illinois, however, available an index of 5,000 names. He was arrested in Illinois for contributing to delinquency of minors.

Also a group of Chicago-area men have been publishing clandestinely a "boy love" newsletter called Hermes, one of the several principal publications of this type in the United States. The newsletters contain photographs and line drawings of nude boys, articles on "boy love" and coded advertisements that tell pedophiles how to obtain the services of young boys.

Also pornographic movies have been made in various parts of the United States, shipped to Europe and sent back to the United States on the pretext that they were filmed in Europe. Some pornographic films have indeed been made in Chicago.

Male perverts in New Orleans established a boy scout troop for the sole purpose of having sex with boys in the troop.

Also an estimated 30,000 children have been exploited in pornography and prostitution in the Los Angeles area, including children smuggled in from Mexico in specially constructed automobiles.

Also children in Michigan have been sexually abused at a summer camp on an island owned by a millionaire pedophile who is now in flight from Federal prosecution.

And the children involved in pornography and prostitution are for the most part runaways and children from broken homes, and in some cases parents have actually sold their children into pornography and prostitution, but there are also many cases of neighborhood parents of children who for all intents and purposes are first class citizens.

Mr. Conyers. Thank you very much.

Mr. Bliss, do you have anything you would like to add?

Mr. Bliss. Nothing specifically that I know. Organized crime has been infiltrating this racket. They made their move in Chicago about 3 months ago when they offered some of these distributors their stores and told them they were their new partners, and caused a little problem there. However, two of the men were arrested there. They are being prosecuted now. The heavy ones we call them. One of them represents the crime syndicate that went into these book stores.

Mr. Conyers. Mr. Moseley.

Mr. Moseley. I can discuss briefly the legal situation in Illinois. I am not a legal expert, but I have investigated this area somewhat.

Mr. Conyers. Their obscenity statute was struck down, was it not?

Mr. Moseley. It was ruled unconstitutional by a Federal court last June. There are now several bills before the legislature to amend this law and get it back on the books.

There also seems to be quite a division of opinion among legal experts in Illinois as to whether obscenity laws are the right approach to this or not. Some people feel that there are sufficient laws on the books in the child abuse area to prosecute. They wish to avoid all the entanglements involved in the obscenity laws.

Mr. Conyers. Do you have a view on that subject?

Mr. Moseley. Well, as I say, I am not a legal expert. My own feeling from our investigation is that probably the area that needs attack most is the sale of this material, because of the difficulties in apprehending people involved in production of child pornography.

Mr. Conyers. We are indebted to you for bringing this matter to the attention of the chairman of the Judiciary who has had us and staff working with you for some time, and I think you very properly deserve the credit that Mr. McClory has indicated that should be paid you.

Mr. Volkmer, do you have questions of the witnesses?

Mr. Volkmer. Yes; I have a couple.

One, can you identify—it is not necessary now if you don't wish to do so. If you wish to do it and submit it in writing at another time that would be fine I am sure with the chairman. The statement that you have here says:

"They also have had some success in obtaining Federal, State and county funding for phony child-care institutions set up as fronts for their illicit operations."

Do you have any proof of any specific instances?

Ms. **Sneed.** The Michigan man mentioned Father Bud's farm in Tennessee.

Mr. **Volkmer.** Yes, I recall that.

Ms. **Sneed.** That is one specific instance of it.

We also find children in foster homes in the State of Illinois, that have been abused by their foster parents and, as Lieutenant Martin pointed out, these people love to take pictures of their victims. They trade these pictures. They like to point to how young the victim is, a point of pride with them. Sometimes the pictures end up in magazines nationally. There is no telling where the pictures are going to wind up.

Mr. **Volkmer.** On this Mr. Norman, who is presently in the Illinois State Prison—at Joliet or where?

Ms. **Sneed.** Statesville.

Mr. **Volkmer.** As far as your investigation has determined, is he still operating this ring from the penitentiary?

Ms. **Sneed.** While Mr. Norman was in the penitentiary he was actually publishing these newsletters on the jail press. Mr. Norman does have a cohort who was a convicted murderer who is out on the streets who has been checking mail, waiting for Mr. Norman's release from prison.

I believe Mr. Bliss can tell you—he talked to Mr. Norman—he indicated that he is planning on beefing up his operation, although Mr. Norman refuses to admit to us it involves young boys.

Mr. **Bliss.** May I correct one thing? He sent his newsletter out from the county jail, not the State penitentiary.

Mr. **Volkmer.** From which?

Ms. **Sneed.** This is from Cook County. When he was first arrested he was sent to the Cook County Jail.

Mr. **Volkmer.** From the Cook County Jail in Chicago he was sending these letters?

Ms. **Sneed.** Yes.

Mr. **Volkmer.** Thank you very much.

Mr. **Conyers.** Mr. Railsback, do you have questions?

Mr. **Railsback.** Yes.

Mr. **Conyers.** You are recognized.

Mr. **Railsback.** May I ask is there any particular part of this city where you found these practices more explicitly conducted?

Ms. **Sneed.** In Chicago, yes, it has been called Dewey Clark University area, is our equivalent to Los Angeles, the Clark University area in Chicago where chickens, which are young boys, will walk up and down the streets and wait for chickenhawks, who are on the street or cruising the entire street. In interviews with young boys who have been involved in this they say that 9 times out of 10, pictures are actually taken of them. Pornographic films are shown to them. It is a way of getting them around to it.

Mr. **Railsback.** Were many of the boys from other States? Were most of them from the Chicago area?

Ms. **Sneed.** They were from the Chicago area.

Mr. **Railsback.** Could you give us a profile of what you would say typifies the typical victim, and the reason I am asking is the previous witness indicated that he thought it would be very difficult to generally characterize any victim being from a certain class. I kind of gather from what you have testified that may not be your experience. You have already indicated runaways and so forth.

Ms. **Sneed**. Right. Definitely a large percentage of them are runaways, but I do agree wholeheartedly with what he said. In New Orleans it was a boy scout person. These children have parents. These were not runaway children. In Los Angeles many of them are runaway children. In Chicago they are foster children, or they are children who do have parents at home. In many cases the parents decide they are psychologically absent, or in fact absent, but it is very hard to pinpoint. Every child pornographer we interviewed said it is the easiest thing in the world to get a child.

Mr. **Ralsback**. When you say foster children, are we talking about children who have been assigned to foster parents by a court?

Ms. **Sneed**. We are talking about these Department of Children and Family Services.

Mr. **Railsback**. That part of your testimony bothers me a great deal, and others have testified along the same lines. The reason I say that is the foster parent programs, which I think are relatively new in many cases, have resulted in a great deal of help and assistance and a support to neglected delinquent children, what worries me is, and I think you would agree, it is very apparent that there is going to have to be some kind of better screening of prospective foster parents or grandparents. There is going to have to be some kind of judicial oversight of exactly how they are conducting their foster home. I say that as a big supporter of the foster grandparents program that has been initiated in many different States.

Ms. **Sneed**. There have been instances in Illinois of children being sent to homosexual foster homes. The Department of Services counters that they do not have proper authority to ask are you homosexual or are you not, because they would be violating their civil rights, and the children in fact have been placed in these homes.

Mr. **Railsback**. Mr. Chairman, I just have a couple of quick questions.

When you began your investigation I take it that you had no difficulty at all and you expressed your shock and surprise that these materials were so easy to obtain. Is that correct?

Ms. **Sneed**. Yes.

Mr. **Moseley**. Mr. Bliss and I went out to several shops in the State Street area and we had no trouble buying them. Several dealers told us that they did not have it available, and then we find it on shelves right in front of us.

Mr. **Railsback**. Mr. Chairman, I have had a chance to read the articles which I think I agree with Mr. McClory are excellent. I wonder if we might make them a part of our record?

Mr. **Conyers**. Without objection it is ordered.

[The information referred to can be found in app. D at p. 422.]

Mr. **Railsback**. Let me just say in closing I think the Tribune, as well as some other papers, but I think the Tribune probably more than any other newspaper has really served to focus attention on what

I believe is a national or even international problem, and I think they are to be commended.

Mr. Conyers. Thank you, Mr. Railsback.

Mr. Gudger, do you have questions of the witness?

Mr. Gudger. Mr. Chairman, I have one only, and it is more for purposes of clearing the record I think than as a direct question. I interpret that someone who applies for and gets license authority to operate a foster home or to take a child in a foster parent situation is being granted the privilege by the State and, therefore, the State could require disclosure of any previous conduct or any patterning of sexual attitudes which might be inimical to the interest of the children because the operation of a foster home is not a right but is a privilege granted by the State. Do you agree with that suggestion?

Ms. Sneed. Yes, sir. The Illinois Legislature is investigating that right now.

Mr. Gudger. And I take it the Illinois State Legislature is presumably planning to set regulations or restrictions which would afford some protection to children in this area?

Ms. Sneed. We certainly do hope so.

One thing I wanted to point out and that is, talking about the distribution and publishing of this material, if it is as lucrative an operation as we found it to be, and money is being made, then that applies to the victims somehow, and one of the cases that was so vivid to us was in Los Angeles a child molester was arrested with a 5-year-old child before he was able to do anything to her. There were two briefcases that were found in his possession. The first briefcase contained child lollipops, whatever, to entice the child, but most important is the second briefcase contained pornographic literature of children. I guess I don't have to insert the title of this pornographic literature, but it showed the child molester actually how to pickup this child, what to do with her once he got her, and through looking at these pictures he could tell all kinds of ways to sodomize this child that wouldn't actually hurt her because in the picture she didn't seem to be hurt, and it seems to me that this kind of material, I certainly have not done research on exactly what happens to a person who reads this kind of material, but it seems to me he was given instructions to do this.

One of the important aspects of these newsletters with their coded classified advertisements is that people subscribe to this all over the country. These people make contact with other people who feel the same way they do about children, and there isn't a tremendous guilt.

We have read letters that they have written back and forth, gentleman, "I am so glad that I finally met somebody who feels the same way I do about children."

Mr. Conyers. Would the gentleman yield?

I would like to ask these members of the journalism profession what they perceive to have been the impact from their series of articles upon the citizens and readers of their paper in the Chicago area? Has there been a perceived response?

Ms. Sneed. It has been a tremendous response.

Mr. Conyers. Tell me about it.

Ms. **Sneed.** It is very interesting. Part of the response has been obviously from the parents who are very shocked and very upset with what is going on. They all want to know do you know about this club? Do you know about anything about this boy scout troop, et cetera. Obviously they are now concerned about what clubs their children participate in. They want to know background. So we are hoping, of course, that parents are aware that they should know what people are involved in the group.

Secondly, we have received letters from the homosexual community who seem very disturbed by the articles in the Tribune because they want to go on record as saying that even in the homosexual community many homosexuals would not want to use children, that they are heterosexuals who go after the girls.

But we have also received letters from pedophiles who will testify their love of children, and who will go into great length describing how they feel that they would never really want to abuse a child, but yet they will go into explicit sexual activity that they do have with these children, even to say that when these children grew up and got married their wives thanked them for teaching them about sex when they were children.

Mr. **Conyers.** Do you have any reactions, gentlemen, from citizens about your series of articles?

Mr. **Moseley.** On the official level the Cook County State's attorney is conducting a grand jury investigation. The U.S. attorney has also done an investigation using FBI agents and Post Office inspectors.

Mr. **Bliss.** The Chicago Police Department has formed a special unit something like the one Lieutenant Martin has since the publication of these articles.

Mr. **Conyers.** Mr. Gudger, I don't know if I am on your time or not?

Mr. **Gudger.** No, Mr. Chairman, I yield back the balance of my time.

Mr. **Conyers.** The question is, what is your assessment of the police activity and conduct in enforcing the law against these abuses and the prosecutor's office activity in the Cook County area? Have you made comments or do you have opinions about that?

Ms. **Sneed.** Last year, early last year, the State's attorney's office tried getting information on various adult bookstores that in fact did sell child pornography. When the obscenity law was struck down, it ended their pursuit.

Then, independent of that, the Chicago Police Department received an anonymous letter from California saying, "I think you ought to be interested in the fact that there is a nationwide boy prostitution ring that is now headquartered in Chicago. It is called the Delta project . . ., et cetera. Based on that, the police department also found themselves with child pornography literature becoming very involved in this.

I am not saying the Chicago Police Department was naive when it came to actually the fact that the child pornography was going on, but I don't think they realized to what extent it was happening until earlier this year. They have had a section of their Youth Division investigating it. New Orleans has a special unit that has been investigating this.

Mr. **Conyers.** Was anybody in Chicago inclined to say if Daley had been mayor this wouldn't be happening?

Ms. **Sneed.** I take the fifth amendment on that.

Mr. **Conyers.** Very sound procedure.

Mr. Ertel, do you have any questions?

Mr. **Ertel.** Just a couple, Mr. Chairman.

I was curious about the fact that you said that organized crime had now moved into this area. Within the last 3 months they have tried to take over this sort of thing? Was that your first indication that organized crime has moved into it?

Mr. **Bliss.** Yes, Mr. Congressman, the first time I had seen or heard about it. They contributed some stuff behind the scenes, but now there is definitely a move by the syndicate to take over because there is a tremendous profit in this racket.

Mr. **Ertel.** Were they involved in pornography, not child pornography?

Mr. **Bliss.** No. They said, "We want to be your partner, and that is it. We want to be your partner and become your partner in business."

Mr. **Ertel.** In the pornography area I think there have been statistics that organized crime has been in that, but the question now is, Are they just moving now into the child pornography area as a new area?

Mr. **Bliss.** No; 3 months ago they moved into pornography per se.

Mr. **Ertel.** Now they are in your area for the first time?

Mr. **Bliss.** Yes, which would include child pornography, of course.

Mr. **Ertel.** Yes, of course, part of the field.

The other question I have is I was curious about the statement that these records, these 30,000 names, were destroyed by the State Department. Can you tell me just a bit more about that? Were they young girls involved with men, or was it strictly male?

Ms. **Sneed.** It was strictly male.

Mr. **Ertel.** Didn't anyone keep a copy of that before you sent it to the State Department?

Ms. **Sneed.** We would certainly like to know if they did. They say they have not.

Mr. **Ertel.** It sounds like a normal precaution to keep a copy of what you send.

Mr. **Bliss.** Lieutenant Hancock told us there are names of many governmental employees in the Washington, D.C., area among his cards.

Mr. **Ertel.** I would think that would be more reason to keep a copy.

Mr. **Conyers.** I suppose someone has to ask the question, why did those records go to the State Department rather than the Department of Justice?

Ms. **Sneed.** Exactly. That is the question we put to Lieutenant Hancock. His answer was that, "We had contacted the FBI." His recollection, which was in 1973, was he contacted the FBI and somehow or other found it a possible passport fraud violation, and because of the amount of names in the Washington area that the State Department would be the rightful agency to handle this.

Mr. Ertel. If the gentleman will yield, it probably was not a criminal violation because of the Federal law, because the Mann Act doesn't cover males. That is why I asked the question whether it was females or nct?

Mr. Railsback. Mr. Chairman?

Mr. Conyers. I yield to the gentleman.

Mr. Railsback. I wonder, in the light of what they have testified about concerning that, if it would not be proper for us to get a statement from the State Department as to why they have destroyed the records.

Mr. Conyers. I think it's an excellent suggestion, and we will so instruct the staff.

Ladies and gentlemen, we are indebted to you. I think the Chicago Tribune moved without an attempt to sensationalism a subject matter subject to that. I think you have done a service not only to your readership in your immediate area but more importantly to the entire country, and we thank you for joining us, and we know you will continue your work with the committee as we proceed to, hopefully, an effective resolution of at least some of the problems raised.

Ms. Sneed. Congressman, I interject one other thing: One thing we found also in investigating one person Lieutenant Martin mentioned, Guy Strait.

Mr. Strait is now in prison in the State of Illinois for having come to Illinois and photographed in pornographic films three foster children who were ages 13, 14, and 16 years old. He was not, however, charged with the photographing of these children in sex action movies; he was charged with actually having sex with one of the boys after the movies were filmed.

These people have records an arm long of having whatever you want to call it, abuse of children or aggravating crimes against nature, or whatever. They have gotten probation after probation after probation; or they have 3 months psychiatric care here, 6 months there, and these people go on and on and on and on and they apparently don't feel there is any teeth in the law to keep them in jail and they continue doing this.

Mr. Strait never voiced to us any sorrow for what he had done, et cetera. He did say, however, that he would stop sex action films of children, if he could, but he was very open with us as far as his sexual commitments to young boys were concerned, and too, he estimated he made between $5 million and $7 million in his own particular industry.

Mr. Conyers. I want to close; I shouldn't ask one more question because it can open up an important field that we are going to get into with a psychiatrist later, but do you perceive in this case a matter of deliberate, willful criminal conduct, or do you perceive some sort of aberrent sexual psychopathic condition operative that would diminish his ability to refrain from these acts?

Ms. Sneed. I see both, sir, mainly because there is a lot of money to be made in this, and they do not miss one chance to make it whether it be pamphlets, films, reselling prints, reselling negatives, they do it, and they make a lot of money.

One pornographer said he could not stop, that he wanted to put that rubber stamp down, and the mail just kept pouring in.

Mr. CONYERS. That certainly doesn't speak to any psychopathic nature. That is the usual vicious greed of a criminal nature.

Ms. SNEED. By the same token, he will talk about his love for children and his sexual involvement with children.

Mr. CONYERS. We thank you very much for coming before us, and we urge you to continue to work with the subcommittee.

Ms. SNEED. Thank you.

Mr. CONYERS. Thank you.

Our next witness is the representative of the American Civil Liberties Association, Ms. Heather Florence, an attorney from a New York law firm.

She chairs the media and communication committee of the American Civil Liberties Union, and was previously chief counsel representing the American Publishers Association.

We presume, Ms. Florence, that by hearing the testimony preceding you, that that would in some way be of assistance in terms of your statement, because you will have heard many other points of view that may differ from that held by the ACLU, and we appreciate your appearance.

I want to state that from the outset, and we also have a very specific and readible document constituting your statement, and it will be incorporated in its entirety in the record at this point, and that will leave you free to proceed in any way you choose.

Welcome to the subcommittee.

[The statement referred to follows:]

STATEMENT OF AMERICAN CIVIL LIBERTIES UNION IN OPPOSITION TO H.R. 3913

I am testifying today on behalf of the American Civil Liberties Union. My name is Heather Grant Florence and I am an attorney in private practice in New York as a member of the law firm of Lankenau Kovner & Bickford. I sit as a member of the ACLU's Communications Media Committee, which studies current issues with impact on First Amendment rights.

INTRODUCTION

The problem of "child pornography" or "kiddie porn", as it has been dubbed by the press, has recently come to the attention of the ACLU which, after much consideration, has developed views on the issue which I shall be articulating here today. In discussing the issue, generally, and H.R. 3913 specifically, I shy away from the phrase "child porn" as that confuses two distinct issues—child abuse which is unlawful activity and the dissemination of printed or visual materials which is constitutionally protected.

The problem we are discussing today is a difficult one, not only for society and for this Congress, but also for the ACLU. For, unlike many issues on which the ACLU speaks out, it fully supports the purpose of the proposed legislation. The ACLU wholeheartedly joins with the many legislators, private individuals and community groups in condemning the sexual exploitation of children for any purpose, including commercial purposes. The actions of those responsible for these abuses are reprehensible. The ACLU believes, and strongly urges, that criminal laws prohibiting child abuse and contributing to the delinquency of a minor should be vigorously enforced, and if appropriate and useful, enhanced in order to eliminate this repugnant activity. So long as the imposition of criminal penalties upon those responsible for the sexual exploitation of children is done with the constitutionally-required due process, it raises no civil liberties problems and will be fully supported by the ACLU.

Yet, however unlawful the sexual exploitation of children for commercial purposes may be, and however repugnant the resulting materials may be, the Constitution requires that any legislation designed to cure these evils not trample on First Amendment rights in the process. H.R. 3913 does. Accordingly, the ACLU opposes this proposed legislation.

The ACLU's basic position is that while it is perfectly proper to prosecute those who engage in illegal action, constitutionally protected speech cannot be the vehicle. Accordingly, the ACLU submits that those who directly cause and induce a minor to engage in a sexual act, or engage in it with a minor, are those who violate the laws; those who recruit and offer children for sexual acts clearly should be prosecuted. Indeed, the ACLU believes that even the activities of one who records the event of the sexual behavior, such as the photographer at the scene, can be found within the group of persons who have caused the act to occur. In contrast, those who have not participated in causing or engaging in the sexual activity but who may profit as a result of it, such as a publisher, editor, distributor or retailer, are not violating the law. While we may vigorously dislike and reject what they do, their activities in publishing and disseminating printed or visual materials are wholly protected by the First Amendment.

OVERVIEW OF H.R. 3913

H.R. 3913 (the "Bill") is divided into three sections. The first section, § 2251, entitled "Sexual Abuse of Children", would outlaw the engaging of a child in prohibited sexual activity as well as the photographing or filming of a child so engaged. The ACLU believes that with some modifications and amendments, this section of the Bill could be made to be constitutional. The second section of the Bill, § 2252, entitled "Transportation of Certain Photographs and Films", is, the ACLU submits, patently unconstitutional since it relies entirely on the dissemination of written or visual material. It is in this section that the Bill goes beyond the prohibition of physical acts and encompasses speech, fully within the First Amendment protections. The third portion of the Bill, § 2253, contains a list of definitions which, when incorporated into § 2252, are impermissibly vague and, in some cases, facially unconstitutional.

Because the entire Bill hinges on prohibiting protected speech and would punish those who are engaged solely in its exercise and not in the violation of laws prohibiting conduct, it is unconstitutional.

SECTION 2251

The problem with the first section of the Bill, § 2251, is its vagueness and overbreadth in extending criminal penalties to those who "knowingly permit" a child to engage in the prohibited acts. Because of overbreadth this could be applied to the publisher, editor or distributor of material who had no participation in arranging, causing or engaging in the child abuse itself.

Indeed, to cover those persons actually participating in the unlawful acts, this Committee might consider elaborating on the phrase "causing" to include presenting or delivering a child for the illegal acts, paying and/or obtaining compensation for a child to so perform, participating in the acts both physically and by obtaining others to engage in them with the minor, setting the stage and running the camera.

However done, it must be emphasized that the definitions be clear and specific so that they do not draw within their ambit those who, while they may benefit from the behavior through publication and sale, were not a direct party to the illegal conduct. Even legislation with a constitutional purpose can, through too broad a sweep, become unconstitutional in its overbreadth, see Graynard v. City of Rockford, 408 U.S. 104, 114 (1972) and *Gooding* v. *Wilson*, 405 U.S. 518 (1972).

SECTION 2252

This portion of the Bill, § 2252, is patently unconstitutional and in the view of the ACLU cannot be redeemed with any conceivable amendments. The section makes it unlawful to distribute or receive specified visual materials, with penalties of up to $25,000.00 in fines or 15 years imprisonment. The gross defect with the section is that the materials, the distribution or receipt of which is the sole offense, are constitutionally protected. If the First Amendment means anything, it means that except for those few very limited and carefully drawn exceptions discussed below, speech cannot be restrained nor can its exercise be punished.

That the Bill relates to pictures instead of words makes no difference as visual expression is just as entitled to protection. See e.g., *Joseph Burstyn, Inc.* v. *Wil-*

son, 343 U.S. 495 (1952); *Kingsley Corp.* v. *Regents of U. of N.Y.*, 360 U.S. 684 (1959); *Jenkins* v. *Georgia*, 418 U.S. 153 (1974) and *Erznoznick* v. *City of Jacksonville*, 422 U.S. 205 (1975).

The areas of "unprotected" speech are small, indeed, and the material prohibited by the Bill does not fall within any of them. Even those narrow areas where the Supreme Court held that protection is not always available are carefully drawn to preserve protected expression: sexually explicit material (*Miller* v. *California*, 413 U.S. 15 (1973)); harshly critical opinions and defamatory statements of facts (*Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323 (1974)) and exposure of secrets involving the Nation's foreign policy and national security (*New York Times* v. *United States*, 403 U.S. 713 (1971)).

Moreover, the Supreme Court and other courts following its dictate have upheld as constitutionally protected speech which many, if not most, people would find hateful, offensive, of no value and of potential harm: advocacy of racial hatred and violence (*Bradenburg* v. *Ohio*, 395 U.S. 444 (1969)); discussions of illegal sexual conduct (*Gay Students Organization of University of New Hampshire* v. *Bonner*, 509 F. 2d 652 (1st Cir. 1974); vulgar expressions, symbols and illustrations (*Cohen* v. *California*, 403 U.S. 15 (1971) and *Papish* v. *Board of Curators of U. of Mo.*, 410 U.S. 667 (1973)).

Above all, it is clear that the Constitution does not tolerate restraint or punishment of offensive speech. We have had only a few days to research these legal questions, but our research has revealed no case which has deviated from this cardinal rule. For recent decisions, see, e.g., *Papish*, *supra*, *Cohen*, *supra*, and, most recently, *Erznoznick* v. *City of Jacksonville*, *supra*, and *Pacific Foundation* v. *FCC*, —— F.2d ——, 2 Media L.Rptr. 1465 (D.C.Cir. 1977). Just within the last month, the Supreme Court of Louisiana struck down as clearly unconstitutional a state statute proscribing the depiction of patently offensive acts of of violence (*Louisiana* v. *Hensley*, (No. 58,495).

It is equally clear that the fact that material may advocate illegal behavior by its arguments or its attractive and even seductive portrayal of illegal or antisocial acts provides no basis to suppress it or to punish those who publish, produce or disseminate it. *Kingsley Corp.* v. *Regents U. of N.Y.*, 360 U.S. 684 (1959). Equally protected by the First Amendment is the dissemination of published material obtained through illegal means. See *New York Times* v. *United States*, *supra*, and *Dodd* v. *Pearson*, 410 F.2d 701 (D.C. Cir. 1969), *cert. denied*, 89 S. Ct. 2021 (1969). What the ACLU suggests to this Committee is really no different from what the Courts in the "Pentagon Papers" case and the *Dodd* case stated to be the law—if the actions allowing the publication to occur are unlawful, proceed against the perpetrators of those acts, but do not punish those who publish or disseminate the material, which acts are constitutionally protected.

SECTION 2253

Because § 2252 of the Bill is, in its entirety, unconstitutional, the definitions in the following section, § 2253, cannot cure the defects. When read into § 2252, however, they exacerbate the problems. Clearly, portrayals of nudity cannot be proscribed; see *Jenkins* v. *Georgia*, *supra*, and *Erznoznick* v. *City of Jacksonville*, *supra*, and the phrase "any other sexual activity" simply is too vague and overboard to withstand constitutional challenge when directed to printed or visual materials. See, e.g., *Miller* v. *California*, *supra*. Of course, if § 2252 is deleted from the Bill, the definitions in § 2253 would be appropriate in defining the conduct prohibited under the first section of the Bill.

EFFECTIVE CHILD ABUSE PREVENTION

In view of the foregoing summary analysis of the law, the ACLU concludes that, as drafted, H.R. 3913 is unconstitutional. Passing it in its present form could have no deterring effect on the true harm—the abuse and sexual exploitation of children—as such a law could not withstand judicial scrutiny. Amending the Bill to omit § 2252 completely and to cure the deficiencies in § 2251 is an option the Committee certainly has.

Because the ACLU fully supports constitutional legislation to battle the problem, the illegal conduct at its core, it has considered additional ways in which the Federal Government might assist in the battle against child abusers. Among the legislative alternatives this Committee might consider are amendments to the Mann Act (18 U.S.C. 2421 *et seq.*) to substitute minors of both sexes for "girls and women" as the law currently provides.

Another legislative possibility would be amendments to the Child Abuse Prevention and Treatment Act (42 U.S.C. § 5101 *et seq.*). That Act creates a commission which, among other things, may provide financial assistance to states with effective child abuse programs. The Committee may wish to consider adding in § 5103, as a prerequisite for grants of Federal funds to a state, the requirement that a state have and enforce a constitutional law prohibiting the sexual abuse of minors for commercial purposes. As this Committee is aware, many state legislatures are examining the problems under discussion here and the Congress could be of assistance in assuring through appropriate guidelines that such new state legislation be constitutional and effective.

CONCLUSION

The ACLU hopes that the presentation of its views will be of assistance to the Committee, and it would welcome the opportunity to continue to share its thoughts on how best to solve this most troublesome problem. Thank you for the opportunity to come and speak with you today.

TESTIMONY OF HEATHER FLORENCE, COMMUNICATIONS AND MEDIA COMMITTEE OF THE AMERICAN CIVIL LIBERTIES UNION

Ms. FLORENCE. Thank you very much, Mr. Chairman.

I want to assure you that the American Civil Liberties Union is most pleased and honored they were invited to send a representative to these hearings.

I was asked to come as a volunteer lawyer for the ACLU, as I have been active, as you mentioned, in the Media Communications Committee.

I would simply like the minutes to reflect a correction. I am not the chairperson of that committee, but simply a member of it.

The other sort of introductory remark I would make is I did find sitting here this morning a very enlightening experience, and perhaps contrary to your and the other Congressmen's assumptions, the views of the American Civil Liberties Union do not really differ from much of the testimony you have heard today.

I am here because I am an attorney familiar with the constitutional issues, and I am not equipped to talk about the actual problems of the child abuse and sexual abuse of children, as some of the other witnesses have.

I do want to clarify at the outset that to the extent there is a problem, such as you have heard testified about today, the American Civil Liberties Union certainly believes that the existing laws to prevent the abuse of children should be effectively enforced, and would hope that the States and this Congress, if appropriate, can enact further legislation to protect children from abuse, whether it be sexual abuse for commercial purposes or not.

With that introduction, I do want to point out I start largely where most of the other witnesses you have heard.

Mr. CONYERS. That is very reassuring, maybe even disarming. The committee usually holds its breath when ACLU comes because we say here comes the hair-splitters, we are now going to get a lot of constitutional arguments about why we can't do what most people feel ought to be done.

We feel most reassured by the fact that our concern about constitutional rights is not altogether missing, and that your concern about our moving dispositively on the question is also present.

Ms. Florence. Of course, one of the things we hope we can be helpful with is obviously if you end up passing an unconstitutional bill because it does violate first amendment rights, in addition to the Civil Liberties Union and other people getting exercised about that, you are going to find yourself without an effective law to do what should be done, so it is largely in the interest of law enforcement that I am going to proceed to perhaps split some legal hairs and point out to you the ways in which we think the current proposed legislation is unconstitutional and does give us first amendment problems.

We do that not just because we don't want you to step on first amendment rights, but because we think it is important that legislation passed in the area be effective, and that when the first, second or third person is arrested under it and prosecution begins, you don't find the whole thing thrown out and dismissed on the basis of an unconstitutional statute.

Mr. Conyers. The chairman should have known he couldn't talk you out of our statement.

Ms. Florence. I did make my statement available to the staff of the committee late yesterday, so I don't know if I can assume with the busy schedule of the morning any of you have had an opportunity to read it.

Let me quickly summarize the positions I have made, leaving out of the case citations and the like, and then perhaps the time can be more usefully spent in questioning.

As you know, of course, the bill before the committee has been structured in three sections.

The first section which is called 2251, deals with actual child abuse. It has nothing to do with sending materials interstate. It goes after the people who caused the child abuse and the person who photographs with knowledge or belief that it will end up in interstate commerce.

Our feeling is, with some rather minor amendments, this section of the proposed bill would be perfectly constitutional. We have no problem with enacting further legislation and Federal legislation, in particularly, to those who cause a child to engage in these sexual acts.

We feel that that could even be expanded so as to include people who set it up, induce it, make money from it, receive money for it, hire the photographer, and the like.

Our sole problem with section 2251 in the bill is that we feel it's a little broad in its sweep by including those who "knowingly permit" those activities to happen.

We feel that that phrase does run into vagueness and overbreadth problems which the Supreme Court has addressed in any number of cases before it over the years, inasmuch as it could pull in those people who are distributing materials that portray these acts, but who themselves had absolutely nothing to do with setting up the acts, arranging them, engaging in them, paying for them, or the like.

Our real problem with the bill then, of course, is with section 2252. That section relies entirely on the acts of transporting materials, visual and written materials in interstate commerce. There is nothing in that bill that links the person involved at the scene of the act itself, and there is nothing in the bill which would make the materials themselves unlawful. It is simpy anyone who distributes pictures of children engaged in acts or nude pictures of children would be subject to rather substantial, indeed, very substantial criminal penalties.

It is our belief, after review of the first amendment law, that that section of the bill is patently unconstitutional, and we don't perceive how that section could be amended so as to comply with first amendment law.

As you will see in my statement, I think at page 4, I have listed some of these areas in which the Supreme Court has held that certain kinds of speech are not fully and always protected by the first amendment.

The material here in question would not fall into any of those categories.

What many would say—and one tends to be sympathetic with it—is, this material has to be objectionable because it was only made by the actual engaging of the illegal acts themselves; it's not simply writing about something, but it's portraying an illegal act of child abuse in the first instance.

We feel, however, that even here there is Supreme Court constitutional law to the effect that if that is the case, your remedy is to go after those people who engaged in the illegal conduct, but that you cannot prohibit or restrain or punish the dissemination of the material which is available as a result of the illegal conduct.

I am sure it would strike you as an inept analogy, but I do think it's useful to think of the Pentagon papers case.

Granted that material is very different from what we are talking about today, there was an instance where the Supreme Court acknowledged in the opinion that there might have been criminal activity involved in obtaining these documents.

There was, you know, just theft, larceny problems, perhaps under the Espionage Act, but the material itself could not be restrained and its publication should not be punished.

So, we feel that the fact there was illegal activity, does not provide a basis for punishing those who simply disseminated the material.

Second, to the extent the material portrays child abuse or engaging in sexual acts with children as attractive or desirable activity, as offensive as we find that, again, we feel that the law is quite clear, that you cannot prohibit the mailing of the material or the obtaining of the material for those reasons.

I guess, on balance, our feeling is there is really nothing you can do to preserve the section, but we feel you would have a viable piece of legislation if it were amended to eliminate that section, slightly amend the first section, and the definitions in the last section of the bill we would find perfectly appropriate when addressed to the acts in question.

Should the bill remain in its present form with the three sections, we do feel there are further constitutional problems with some of the definitions.

For example, nudity is included, and we have two Supreme Court cases within the last 2 or 3 years which have made it clear that mere nudity cannot be proscribed.

The phrase "other sexual activity" would run afoul of many of the Supreme Court cases on vagueness and overbreadth, and, of course, in particular the Supreme Court's major obscenity case in 1973, *Miller* v. *California*, which held as one of its principal holdings that the statutes must be very specific in defining the conduct to be prohibited.

So in looking where we come out as a result of this analysis of the bill, our feeling is that certainly we would support and encourage enactment of this bill as amended, as we suggest.

We have always tried to think of other things this committee might consider to get at the heart of the problem, and the heart of the problem is, of course, the abuse of the children themselves. The two suggestions we have made in our statement, one of which has been discussed in a variant form already today, is an amendment to the Mann Act. Our suggestion is somewhat different from that which has been voiced, which is that we substitute the phrase "minors" for current language of "girls and women".

We think this would give the act a little new life. I think it was mentioned here this morning that there have not been many prosecutions under it in recent years and perhaps it is because the application to women seems a little archaic in our society today, and perhaps if you included "minors" of both sexes and left out adults, it would really give the act new life.

We think you should consider that.

The second thought we have come up with and have not had an opportunity to ascertain whether it is really viable, both legislatively and practically, would be some kind of amendment to the existing Child Abuse Prevention and Treatment Act. That sets up a center to study child abuse treatment and the like, and as I understand is empowered to grant Federal funds to the States.

The act currently contains a number of requirements that the State laws must meet in order to obtain that Federal funding, and we think you might want to consider amending that act to include, as a further requirement, that the State have legislation which is both constitutional, effective, and being enforced in this area of the sexual and commercial exploitation of children.

I would be very happy to answer any questions that my comments have raised. I do want to emphasize that the American Civil Liberties Union in general, and I, of course, personally, would welcome the opportunity to continue to work with the committee and to give you the benefit of our thoughts in the area.

Thank you very much.

Mr. CONYERS. That was an excellent statement, and I don't think it left too many members of the subcommittee overly distraught.

I think the suggestions are ones that we should consider very thoroughly in terms of constitutionally perfecting the legislation in this field.

I also am very grateful for additional recommendations that you made that go beyond the legislation. All of us, I think, are beginning to get the feeling that we may have won part of the problem here that we are trying to deal with legislatively, and that perhaps the larger part may not be addressed, may not be appropriate that this particular subcommittee in the Congress deal with.

We certainly want to make it clear we know we are not taking care of the entire problem, even if we move to specific Federal legislation against child abuse and pornography. So we are grateful for those reasons for your statement.

Do you think even a perfected constitutional bill enacted into law will effect much one way or the other the nature of the industry, given the society and the other sociological dynamics that have been discussed in the hearing?

Ms. **Florence.** First of all, let me emphasize I can't speak to that as an expert. I am happy to give you my own thoughts.

I first request, however, that you define for me the industry. By that are you referring to the distribution of specially explicity materials, whether involving adults or children, or to the child abuses themselves, abusers themselves?

Mr. **Conyers.** To the first instance.

Ms. **Florence.** I guess my own feeling on the pornography issue overall, and I believe to a certain extent this does reflect the views of the ACLU, and, indeed, as was stated by Mr. Leonard of the District Attorneys Association earlier today, we believe little purpose is served by the obscenity laws as they currently exist, and that people are going to want this material and they are going to manage to get it and to the extent there has been substantial infiltration by organized crime, as has been testified to here today, that infiltration probably is going to be the result of the fact that it is considered contraband, and that there are risks attendent to it.

Whether this particular legislation or some version of it would have an effect on the industry itself, my hunch would be the largest effect it would have, at least in the first instance, until enforcement is fully under swing, is to increase the involvement of organized crime.

Mr. **Conyers.** By enacting the legislation?

Ms. **Florence.** Because it becomes much more difficult to get, the people don't want to take the risk, so instead of having legitimate businessmen engaged in it, it's even more likely to go underground more than it is. Now, that is presupposing a law on the books and questionable enforcement.

Mr. **Conyers.** That is very discouraging. I would hope this would arm the prosecutorial forces around the country to deal more effectively with organized crime rather than less effectively.

Ms. **Florence.** I guess from what I heard this morning—and I am neither a prosecutor nor a defense counsel in these kinds of matters—but what I heard this morning, the real problems with law enforcement are getting the victims, getting the necessary witnesses, and I really don't see how the bill would assist in that.

To the extent the bill were enacted as we have suggested with just a section on the child abuse itself, that does, of course, give the Federal Government a role to play in the area, and I am sure that the Federal prosecutors could be very helpful, indeed, it's even possible that by convening grand juries and subpenaing those people who distribute the materials, which does raise some first amendment questions but they are not quite so obvious as the legislation as drafted, perhaps you could get a handle on some of it which is not being done through the existing State enforcement programs.

Mr. **Conyers.** Thank you very much.

Mr. Gudger, do you have any questions, sir?

Mr. **Gudger.** Mr. Chairman, I have only one question.

If the publication and distribution of published materials, pornographic materials, is constitutionally protected, isn't the only thing which is not protected a violation of State rather than Federal law?

Ms. Florence. As I understand, currently that is absolutely true.

Mr. Gudger. Therefore, can this Congress act if your propositions of unconstitutionality are valid?

Ms. Florence. We feel you could act. First of all, in the other ways we have discussed, such as the Mann Act and the Child Abuse Prevention Act encouraging the States to pass further legislation, but we also feel that the first section of this bill would give you the right to, or give the Federal Government a handle on the problem, because it does link the commission of the criminal acts to the photographing of those acts, with the knowledge or reason to believe those photographs will end up in interstate commerce.

It is a somewhat tenuous link for Federal jurisdiction; it is an area in which there could be first amendment arguments made. There is no question, but we feel we would support it.

The American Civil Liberties Union would support that, and it could be helpful.

Mr. Gudger. Would you contend it was constitutional for the Federal Government to prohibit the taking of the photographs, and the abuse of the child for the purpose of legally, as you contend, publishing and transmitting the published material in interstate commerce?

Ms. Florence. You ask me a very difficult question. Certainly if I were defending a defendant in that kind of a case, which again is not my practice, I want to make clear, certainly I would raise the arguments that you make, that there are constitutional problems. I believe similar arguments have been made in connection with prosecutions under the Mann Act.

A woman being transported over State lines to engage in immoral purposes, the defense has been raised that part of the activity was to make a movie, and that is a protected first amendment activity, and therefore, I can't be prosecuted, or the act itself is unconstitutional.

I have not researched the area carefully. I have come across those annotations, and I believe those defenses have not been sustained, so on the basis of that precedent I believe that the first section of the bill, as amended to make it clear which group of people we are talking about, probably has an excellent chance of withstanding constitutional scrutiny, but certainly arguments could be made.

Mr. Gudger. I thank you for drawing that parallel, because I am aware of that line of decision you make reference to.

Thank you.

Mr. Conyers. Thank you, Mr. Gudger.

Mr. Ertel, do you have questions?

Mr. Ertel. Yes, Mr. Chairman. Thank you.

I have a couple of questions about your analysis of section 2251 which involves the words "knowingly permit." You indicate that that may be unconstitutionally vague. I wonder, do you know any cases which hold the term "knowingly permit" unconstitutionally vague, because that term is used in the model penal code extensively, and has been enacted in many States who have enacted the model penal code in relation to other criminal conduct, and therefore, I wonder if that is not, in fact, precisely defined.

Ms. Florence. I will certainly confess ignorance. No one case comes to my mind where that clause has been found too broad. Our feeling was really linked to Congressman Gudger's point that because there is a connection in that section to distribution of materials interstate, it has a sort of first amendment penumbra about it, and to the extent it could be construed to pick up the distributor or the producer, somebody who was not involved in the act but who is obviously getting material from the source of supply, it certainly could be argued that that person knowingly permitted the acts to go on. He knows what his source of supply is, and he hasn't stopped that supply from happening.

That is really the kind of analysis that has led to our objection.

Mr. Ertel. It seems to me that that is used in part 1, the first section, "knowingly permitted a minor to engage," which is directed at a guardian or someone else. I don't happen to have a copy of the bill in front of me, and part 1 or the first section, would you agree that is constitutional?

Ms. Florence. Certainly I think it would be constitutional and proper to include language which would encompass a guardian or anyone responsible for a child who lets the child engage or be induced into these acts. I also understand from much of the testimony this morning that, indeed, it's often the parent who, in effect, produces the child, who presents the child and certainly we think that should be covered.

Perhaps one way to do it is, instead—even the legislative history could be helpful, of course, in making it clear you are not talking about the people involved in sale or distribution of materials who had nothing to do back at the scene of the act itself—but other alternatives would be to spell out a little bit more fully the phrases in that section which are "cause or knowingly permit."

Mr. Ertel. That is where I want to stop you, if I may.

I hate to interrupt. I want to try and get that, because I think this is very important to us with regard to this bill, and I would like to get your views and see, if we, in fact, were going to pass the bill, what you think.

Section 2251 reads: "Any individual who causes or knowingly permits a child to engage in a prohibited sexual act or a simulation of such an act shall be punished."

Do you have any problems with the word "knowingly permit" there?

Ms. Florence. When you stop right there as if there were nothing else, then I would not have a problem, but because that section continues to the act of photographing with the knowledge that the photographing is going to end up in interstate commerce, that is when I stop and say, "I have a problem."

Mr. Ertel. Where, in fact, it does. We are testing then the intent of a person's mind, and we have tried those traditionally as to whether they go into interstate commerce, if they "knowingly permit," knowingly is a state of mind, it's a definitional term, and it has been very clearly defined, especially in the model penal code. It has been defined throughout the Nation. That is what causes me the concern. Maybe I am getting too technical.

Ms. Florence. You may be too sophisticated for me. I will be happy to look into it further, but let me give you a hypothetical question.

Take, for example, a book which may have come to the attention of this committee, and I am sure it has, called "Show Me," which was published by St. Martins Press, a very substantial and respectable book publisher in this country.

It contains photographs of nude children and a lengthy introductory text about sex education and so forth. The book identifies the origins of photographs which in this case were from Germany. Would your feeling be that the phase "knowingly permit," and assuming that that book fell within the proscriptions of the legislation——

Mr. **Ertel.** I guess that is an assumption we are going to have to analyze.

Ms. **Florence.** As currently drafted it would.

Mr. **Ertel.** I think the word "nudity" in here in and of itself is unconstitutional. Using the word "nudity," I think that is unconstitutional without any question, knowing and permitting the child to be photographed nude. I think that is out because that is a baby picture, thus eliminating that possibility. However to simulate a sexual act with a minor at the age of 16, how about that, knowingly?

Ms. **Florence.** My problems I am having with the publisher who acquired that material and might know that somebody was in the process of setting that up to be photographed, would that publisher be knowingly permitting this activity to go on? That publisher would be buying in effect a product after the fact, would not be——

Mr. **Ertel.** You missed one defining term, knowingly permits a child. He may know it is going on, but he is not knowingly permitting the child. The child is the object of that and it has to be knowingly permitting the child, which means involved with the child. I think your definition when you drop the word "child" obviously then you have a constitutional problem. Let's leave the word "child" out.

Ms. **Florence.** Certainly if it were addressed to somebody who had knowledge and permitted a particular child in a particular circumstance to be subjected to these activities, I am sure we would find that appropriate to punish and probably constitutional.

I would like the opportunity, if it is acceptable to the subcommittee, to look into the precedents you raised and see if we can provide some more educated thoughts on this.

Mr. **Ertel.** I would certainly ask the subcommittee chairman to ask you to submit that. I think that would be appropriate because I think that is going to be an issue that we are going to have to face, and we are going to have to face it very strenuously when we consider this legislation. I don't want to go through 2252 because I have the same problems there.

I personally have tried cases knowingly permitting a person to drive a vehicle. An owner allows a person to drive his car knowingly when the person is drunk. I have never seen an attack that has been successful on that section. That is why I am raising this.

You have raised this issue knowingly permit. Knowingly usually defines and limits and usually keeps it out of the constitutional morass. At least I hope it does. That is why I wanted to raise the problem.

I appreciate your comments and your detailed knowledge. I would like to know if you would do that because it would certainly be helpful to me, and I hope it would be helpful to the committee.

Ms. Florence. I would be happy to.

I would simply like to point out that is not the question of course, section 2252. We are talking about 2251; right?

Mr. Ertel. We were talking 2251. I would be glad to talk 2252.

Ms. Florence. I think the problems with 2252 are so much greater.

Mr. Ertel. All right.

May I pose a question on 2252 at this point? I know it is late in the day and we have to go. Would knowingly transport, ship or mail any photograph or film depicting a child engaged in a prohibited sexual act or simulation of such an act, are you contending that that is unconstitutional? Miller, as I recall, says that we can define obscenity. If we get the Miller definition in there that a person knowingly transmits prohibited material which would fall within the definition of Miller, do you not think then we would have a constitutional section?

Ms. Florence. Certainly that is an amendment that would probably bring you within the Supreme Court guidelines, and would be constitutional. The American Civil Liberties Union would not support that as it finds that the obscenity laws as they exist and have been construed and applied by the Supreme Court are troublesome to us, and it concurs with Mr. Leonard that adults should be able to obtain, see, and read what they want, but it could go quite a way in solving our constitutional problem.

I question whether it would add much to the effect of law enforcement. Inasmuch as, as has also been mentioned here today, there are Federal obscenity statutes which you already have, and persons with this material, to the extent it falls within the definition there, can be prosecuted against under those existing laws, and those laws have continuously been upheld by the U.S. Supreme Court as late as yesterday.

Mr. Ertel. Yes; but I think when you are talking the Supreme Court has defined children and minor differently than adult material.

Ms. Florence. That is in connection with what is appropriate for a minor to see.

Mr. Ertel. I would imagine the Court will go along with what is appropriate for a child to engage in. If they cannot see it they certainly cannot engage in it.

Ms. Florence. I would hestiate to speculate about the Supreme Court, but it would be a case of first impression I believe.

Mr. Ertel. It may be a case of first impression. I think it is an a fortiori argument as I remember it. So I can see us cleaning up 2252. I think it has some problems if you take and tie the nudity section into the prohibited sexual act, but I happen to vary with you a bit, and I understand the American Civil Liberties Union. I appreciate their position. But I do believe that we have to legislate within the confines of what the Supreme Court now defines as a free speech area, and what you are saying is you don't agree with the Supreme Court's decision.

Ms. Florence. Yes; that is what I am saying, but my integrity as a lawyer requires that I acknowledge that if appropriately amended to be tied to the constitutional definition of obscenity the substantial problem with that section would be resolved.

Mr. Ertel. Thank you very much. I appreciate it.

Ms. **Florence**. But I would not advocate it.

Mr. **Ertel**. I can appreciate your comment on that. I find your testimony very helpful, and I appreciate it very much. I think it is very important to us to have your views because obviously the American Civil Liberties Union, if we go too far, will be the one probably to spearhead the attack to knock it down because it does encroach on impermissible areas. So I appreciate your testimony.

Mr. **Conyers**. Thank you both.

The subcommittee counsel has a couple of questions.

Mr. **Gregory**. I have two questions that I am asking at the request of Mr. Volkmer, who had to leave.

The first question relates to the subject just discussed. The Supreme Court decision on Monday in the *Smith* case held that a community standard set by a jury rather than State standards set by a legislature should apply even though it was a Federal prosecution. What implications do you see, if any, of that decision for this legislation, viewed in terms of the legislation, or in terms of the effect upon the prosecution of existing laws?

Ms. **Florence**. First of all, let me state clearly that I have not yet read the decision. I read a report of the decision in the paper, and I was familiar with the case, familiar with the briefs, and the arguments before the Court, but I haven't read the opinion, and I really haven't had an opportunity to analyze it.

I think what it probably does though is make it clear that the Federal Government can prosecute in any jurisdiction so long as there has been some movement in interstate commerce regardless of what the State law or local obscenity standard is. It really will depend upon what the particular jury selected within the district where the trial takes place. Presumably still on de novo review, the appellate courts will continue to make their own independent judgment as to whether the material could conceivably be obscene as a matter of constitutional law, but it would appear certainly to strengthen the hand of Federal prosecutors around the country.

One of the things that I find very troublesome about this situation as a civil libertarian is the whole question of selecting the venue in which such a prosecution would be brought to the extent that the prosecutors believe that it is more likely to result in a conviction in one community because of the nature of the community. Some of the material we are talking about can be mailed into that district and prosecution begun in that district and, of course, that will have an impact on national distribution, so we have very serious problems with it.

As far as State legislation is concerned, my feeling would be that the *Smith* decision would give it some life and it would be respected and applied in States regardless of what the State legislation was.

Mr. **Gregory**. But this was a reaffirmation of the *Miller* case which as I recall expressly encouraged State and local prosecutions rather than Federal. It is my understanding that following that decision there has been a decrease in U.S. attorney-brought cases. Is that consistent with your opinion?

Ms. **Florence**. I really don't have any knowledge of the statistics on how this is proceeding. Understandably enough, though, of course in the *Miller* decision one of the things that the Supreme Court emphasized was that by going for the local standards and allowing the local community to set its own standards there could be some communities that would want to be more liberal and more lax about this material than they would be able to if a national standard were used even though there might be a community someplace else that was much more restrictive.

It would seem to me, and again I have not read the *Smith* decision, that perhaps the Court is pulling back from that language in *Miller* because they are allowing the more restrictive standard of the Federal jury to override what was a clear statement of the community standard by the State legislature.

Mr. **Gregory.** I think you were here earlier this morning and heard investigator Martin's suggestion that legislation be enacted requiring the producers and distributors to label the material being sent in interstate commerce, including the names and addresses of the children depicted in the photos and films. Do you find any constitutional problems raised by that suggestion?

Ms. **Florence.** Yes; I do. Again I haven't had a chance to fully analyze it, but I think there are two substantial constitutional problems. One is of course the potential fifth amendment problem to the extent the legislation is drafted to apply only to contraband materials in which you should not be dealing, if those are the materials on which you have to put this information. Simply doing it is to be admitting some kind of involvement in criminal activity, and of course under the terms of forcing somebody to identify the source of his material. I think again this is an area where I would, if the committee is inter-

Second, however, I think it does raise first amendment problems in
fifth amendment that cannot be required.
becomes a burden it is kind of a tax on the exercise of first amendment rights, and this the Supreme Court as far back as to the *Grosjean* case, might prohibit as well.
ested, welcome the opportunity to do some research into it and respond subsequently, but my recollection is that there are a number of cases which have held that that kind of forcing someone to identify himself in certain kinds of statements do run amock of the first amendment, the anonymous political advertising cases, and to the extent it

So I think there are serious problems with it. It might not even be something you want to consider because I think it was pointed out by members of the committee and others it might be of questionable value in any event as a practical matter that it won't get you very far, anyway.

Mr. **Conyers.** The subcommittee counsel, Tom Boyd.

Mr. **Boyd.** I had a couple of questions that I wanted to direct. My questions go again to section 2252.

The approach taken thus far seems to be in direction of the use of "consenting adults" and setting obscenity standards, which I think presents some degree of difficulty, but if you take 2252 as drafted with certain modifications you are suggesting then that the distribution of certain prohibited material depicting consenting adults is unconstitutional?

Ms. **Florence.** I am sorry.

Mr. Boyd. The laws and regulations of the distribution of certain types of prohibited materials, specifically involving consenting adults——

Ms. Florence. Is unconstitutional.

Mr. Boyd. And there is no difference if it involves minor children?

Ms. Florence. Yes, that is my position, there would be no difference.

Mr. Conyers. I think your presentation here has been most helpful and we have reached a mutual agreement that where you can help us on several points that have been raised but perhaps not precisely resolved we will have further association, and we thank you very much for coming before us and being our last witness for today.

Ms. Florence. Thank you very much, and I will look forward to working with you further.

Mr. Conyers. The subcommittee stands in adjournment.

[Whereupon, at 12:45 p.m., the subcommittee adjourned.]

SEXUAL EXPLOITATION OF CHILDREN

FRIDAY, JUNE 10, 1977

U.S. House of Representatives,
Subcommittee on Select Education
of the Committee on Education and Labor,
and the Subcommittee on Crime
of the Committee on the Judiciary,
Washington, D.C.

The subcommittees met pursuant to notice at 9 a.m. in room 2175, Rayburn House Office Building, Hon. John Brademas [chairman of the Subcommittee on Select Education] presiding.

Present: Representatives Brademas, Miller, Kildee, Biaggi, Jeffords, Pressler, Quie, Conyers, Volkmer, Gudger, Ertel, and Railsback.

Staff present: Hayden Gregory, Jack Duncan, counsel; Leslie Freed, assistant counsel; Tom Burch, legislative assistant; Roscoe Stovall, associate counsel; Martin LaVor, senior legislative associate.

Mr. **Brademas.** The Subcommittee on Select Education of the Committee on Education and Labor and the Subcommittee on Crime of the Committee on the Judiciary will come to order for the purpose of continuing hearings on the issue of the sexual exploitation of children.

Until recently, the problem of the sexual abuse of children in this country received little attention, yet there is increasing evidence that young people are being exploited for prostitution, that there is a startling number of cases of incest and that children are being used in poronographic films and magazines.

It is to one particular dimension of the problem of the sexual exploitation of children that our hearing this morning is addressed, the production and distribution of pornographic materials depicting children.

Bills dealing with this problem have been introduced and referred both to the Subcommittee on Select Education of the Committee on Education and Labor and the Subcommittee on Crime of the Committee on the Judiciary.

The Subcommittee on Select Education has held hearings in Los Angeles and New York on the proposed legislation. At those hearings we received testimony from individuals about the severity and extent of the sexual abuse and exploitation of children. The Subcommittee on Crime, chaired by Congressman John Conyers, has also held hearings on this matter.

Today our witnesses represent the Department of Justice, the U.S. Postal Service and the U.S. Customs Service. We will hear, too, from Kenneth Wooden, director of the National Coalition for Children's Justice.

We are pleased to hear from these witnesses for their comments and observations on the proposed legislation.

Before calling our first witness this morning, the Chair would like to call on his friend and distinguished colleague, the chairman of the Subcommittee on Crime of the Committee on the Judiciary, the gentleman from Michigan, Mr. Conyers, for any statement he may wish to make.

The Chair would observe that he will hold the chair for the first few witnesses and then turn the chair over to the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. I want to thank my colleague from Indiana, the chairman of the Select Education Subcommittee, and indicate that we are doing what makes preeminently good, commonsense, that where we have an area in which there is joint concern by more than one committee of the Congress, the witnesses that might be called are asked to appear before both committees in a joint hearing.

So I commend my colleague and his subcommittee for joining with us to this end.

The witnesses from the Government agencies that have jurisdiction over Federal obscenity statutes have been asked to testify; we feel a need to determine, as we move into this subject matter, the adequacy of State laws and enforcement, as well as the adequacy of Federal enforcement of present law before we can presume to determine what, if any, changes need be made in the present Federal statutes.

Consequently, this hearing will, of course, concentrate on the nature and scope of child sexual abuse, but we want to concern ourselves with the concept of what new Federal law would be acceptable in this area. So we welcome those witnesses from the Justice Department, Postal Service, Customs Service and our other witnesses that may join us.

I am very pleased to undertake these hearings with my colleague from Indiana.

Mr. BRADEMAS. Thank you very much, Mr. Conyers.

Our first witness this morning will be Mr. John C. Keeney, the Deputy Assistant Attorney General, Criminal Division, Department of Justice.

Mr. Keeney, we are pleased to have you with us this morning.

TESTIMONY OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY PHILIP WILENS, CHIEF, GOVERNMENT REGULATIONS AND LABOR SECTION; DONALD NICHOLSON, U.S. DEPARTMENT OF JUSTICE

Mr. KEENEY. I would like to introduce my colleagues.

On my right is Mr. Philip Wilens, who is Chief of the Government Regulations and Labor Section, which is responsible for the obscenity laws; and on my left, Mr. Donald Nicholson, who has worked extensively in the area of obscenity.

Mr. Chairman, I submitted a prepared statement to the committee and I would like to offer the statement in its entirety for the record; and if I may, I would very briefly describe the bills, some of the problems we have with respect to them, and some suggestions we have to make.

Mr. **Brademas.** Without objection, that will be so ordered.

[The prepared statement of John Keeney follows:]

Statement of John Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice

My name is John Keeney and I am Deputy Assistant Attorney General in the Criminal Division of the Department of Justice. It is a pleasure to appear before you today to discuss the position of the Department of Justice on several bills which would prohibit the sexual exploitation of children and the transportation and dissemination of photographs or films depicting such exploitation.

H.R. 4571 and H.R. 7093 amend the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101–5106) by adding proposed sections 8, 9 and 10. Section 8 provides a fine of not more than $50,000 or imprisonment for not more than twenty years or both for any individual who causes or knowingly, in the case of H.R. 4571, or willfully, in the case of H.R. 7093, permits a child to engage in a prohibited sexual act as defined in the bill or the simulation of such an act if such individual knows, has reason to know or intends that such act may be photographed or filmed and that the resulting photograph or film may be transported, shipped or mailed through interstate or foreign commerce or may affect such commerce. The same penalty would apply to any individual who photographs or films a child engaging in a prohibited sexual act or in a simulation thereof if such individual knows, has reason to know or intends that any resulting photograph or film may be transported, shipped, or mailed through interstate or foreign commerce or may affect such commerce.

Section 9 provides that any individual who knowingly transports, ships, or mails through, or in such a manner as to affect, interstate or foreign commerce any photograph or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act, or any individual who receives for the purpose of selling or sells any such photograph or film which has been transported, shipped, or mailed through, or in such a manner as to affect, interstate or foreign commerce shall be fined not more than $25,000 or imprisoned not more than fifteen years or both. Section 10, as set forth in H.R. 4571, defines "child" as any individual who has not attained age sixteen and defines "prohibited sexual act" to include sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus, "any other sexual activity" or "nudity; if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction." H.R. 7093 uses the terms "sexual sadism" and "sexual masochism" in place of "sadism" and "masochism" and uses "person" instead of "individual" throughout the bill. I should note here that the term "person" would appear to be preferable to the term "individual," since it would permit prosecution of business entities, [illegible] well as individuals, where appropriate. In all other respects the definition[illegible]e identical. Both bills vest enforcement authority in the Attorney General.

H.R. 3913 and several other bills amend Title 18, United States Code, by adding proposed sections 2251, 2252, 2253. I note that Title 18 of the U.S. Code, which contains the bulk of our Federal criminal statutes, would be the most appropriate location for the proposed provisions. These bills are identical in all respects to H.R. 4571 except for H.R. 5474 and H.R. 6747, which impose minimum penalties of $10,000 and four years in section 2251 and minimum penalties of $5,000 and two years in section 2252, and H.R. 5522, which contains certain additional substantive provisions not found in the other bills. In addition to the other provisions, section 2251 as set forth in H.R. 5522, punishes with a maximum fine of $50,000 or a prison term of 20 years or both any individual who causes or knowingly permits a child to engage in prohibited sexual act or stimulation thereof if he knows, has reason to know or intends such act may form a part of a commercial live show and such show travels in or affects interstate or foreign commerce. The same penalty extends to an individual who travels in, uses a facility in or otherwise affects interstate or foreign commerce to induce or permit a child to commit a sexual act for the purpose of prostitution.

I should like first to set forth the Department's views concerning the provisions of the bills which are common to all of them. For the sake of clarity my comments will be in terms of the provisions of H.R 4571. I shall then comment on the provisions that are peculiar to H.R. 5522.

We share the concern of the Congress with regard to the production of films and photographs portraying sexual abuse of children. However, we think that the proposed legislation needs to be modified in certain ways in order to deal with the problem.

In the first place, the bill is, in our opinion, jurisdictionally deficient. It is well settled that Congress may bar articles it deems undesirable from interstate or foreign commerce or from the mails. *E.g., United States* v. *Orito*, 413 U.S. 139 (1973); *United States* v. *Darby*, 312 U.S. 100 (1941); and *Periara* v. *United States*, 347 U.S. 1 (1954). Leaving aside for the moment the effect of the First Amendment, there is little doubt that the Commerce Clause authorizes the enactment of criminal penalties for persons who mail or ship in interstate or foreign commerce or receive in the mail or from interstate or foreign commerce for sale films or photographs of the type in question.

It is also settled that Congress may prohibit the manufacture of an article within a state if the article will enter or affect interstate or foreign commerce. *E.g., United States* v. *Darby, supra; Wickard* v. *Filburn*, 317 U.S. 111 (1942); and *United States* v. *Wrightwood Dairy Co.*, 315 U.S. 110 (1942). Congress may also punish conduct which has only a potential effect on commerce. *E.g., United States* v. *Addonizio*, 451 F.2d 49 (3d Cir. 1971); and *United States* v. *Prano*, 385 F.2d 387 (7th Cir. 1967). Congress could, therefore, prohibit the manufacture of the films or photographs in question if the producer knows, has reason to know or intends that they will move in or affect interstate or foreign commerce.

Congress could also prohibit causing or knowingly permitting a child to perform a prohibited sexual act where the person responsible knows, has reason to know or intends that the acts will be filmed or photographed and will be placed in or will affect interstate or foreign commerce. Congress could rationally conclude that children below age 16 are incapable of making a free and understanding decision to participate in the acts which the bill prohibits. See *Ginsberg* v. *New York*, 390 U.S. 629 (1968). Moreover, adults who permit children to participate in these activities play an essential role in the production process somewhat akin to the supplier of an essential material. See *United States* v. *Perry*, 389 F.2d. 103 (4th Cir. 1968); and *Call* v. *United States*, 265 F.2d 167 (4th Cir. 1959), wherein suppliers of sugar and containers to illicit distillers were convicted under 26 U.S.C. 5686(a), which forbids possession of property with intent to violate the internal revenue laws.

However, the bill extends liability to cases where a child "may" be filmed or photographed and the resultant material "may" enter the mailstream or enter or affect interstate or foreign commerce. Since what "may" occur also may not occur, the bill could cover a purely local act of child abuse in which there is, in fact, no filming or photographing and no possible effect on interstate or foreign commerce. The bill, therefore, would reach situations not properly cognizable under the Commerce Clause. This defect can be remedied by changing the word "may" where it occurs in the bill to "will".

The words "affect interstate commerce or foreign commerce" should also be deleted from the bill. Without this change the bill would cover a purely intrastate photographing and distribution operation on the theory that commerce is "affected" in that the processing of the film or photographs utilize materials that moved in interstate commerce. See *United States* v. *Addonizio, supra*, and *United States* v. *Prano, supra*. In our opinion, the investigation or prosecution of purely local acts of child abuse should be left to local authorities with Federal involvement confined to those instances in which the mails or facilities of interstate commerce are actually used or intended to be used for distribution of the film or photographs in question.

The same language which renders the bill jurisdictionally questionable also poses problems with regard to intent. Under the proposed legislation, a person may be convicted if he "intends" that the act in question "may" be photographed and "may" be shipped in interstate or foreign commerce or mailed. We suggest that a person may intend that something happen or that it not happen. The standard of intent used in this bill, which is based on the mere possibility that certain acts will occur, would seem to be an insufficient basis on which to predicate criminal liability. An individual may also be convicted if he "intends" to "affect interstate commerce or foreign commerce." While an individual may intend to mail or ship an article, which is a physical act, the question of whether an action "affects commerce" is an ultimate conclusion based upon the assessment of physical acts rather than a matter of intent. For these reasons also, we recommend that the bill be limited to situations in which a person knowns, has reason to know or intends that the act in question will be photographed and mailed or shipped in interstate or foreign commerce.

Second, the bill does not distinguish between material which is obscene and material which is protected by the First Amendment. In *Miller* v. *California*, 413 U.S. 15 (1973), the Supreme Court required that material must be evaluated as a whole in determining whether it is obscene. However, the present bill would forbid the manufacture and distribution of a film containing one brief scene of prohibited conduct and otherwise innocuous. For example, the bill would apply to the film "The Exorcist," which contains a scene in which a minor simulates masturbation but is clearly not legally obscene.

I would like to emphasize at this point two very significant results which would follow from the enactment of this legislation. First, an existing motion picture, such as "The Exorcist," could no longer be distributed in interstate commerce so long as the simulated scene involving the minor is retained in the film, and second, any future production of a motion picture film which contains a depiction of a minor engaged in a prohibited sexual act would be criminally proscribed even though, as in the case of "The Exorcist," the offensive scene is merely a small part of the film which, taken as a whole, would not be legally obscene under the standards set forth by the Supreme Court in *Miller*. This would be a clear statement of public policy by the Congress which would undoubtedly create severe problems for the courts, particularly in situations where the offensive material is merely a small part of what is otherwise a socially acceptable product.

Certain infringements on protected expression have been justified under the principle expressed in *United States* v. *O'Brein*, 391 U.S. 367 (1968), wherein the Court ruled that a regulation is sufficiently justified if it is within the constitutional power of the government, if it furthers an important or substantial governmental interest unrelated to the suppression of free expression, and if the incidental restriction on alleged First Amendment rights is no grater than is essential to the furtherance of that interest. Viewed against the background of this principl it would appear that the bill would further government's legitimate interest in protecting the welfare of children. See *Ginsberg* v. *New York, supra;* and *Prince* v. *Massachusetts*, 321 U.S. 158 (1944).

On the other hand, the Court has held that, as a general rule, a criminal statute which would reach protected expression as well as obscenity is void on its face for overbreadth. See *Erznoznik* v. *City of Jacksonville*, 422 U.S. 205 (1975); and *Butler* v. *Michigan*, 352 U.S. 380 (1957). Although the Court has modified this doctrine in the case of a statute dealing with distribution to children only, see *Ginsberg* v. *New York, supra*, the proposed bill would prohibit distribution to anyone. In the face of the strong constitutional protection accorded material which is not obscene, we cannot say with any certainty that the proposed legislation would withstand constitutional challenge.

Third, certain of the definitions of "prohibited sexual act" set forth in section 10 do not appear to be appropriate to deal with the conduct sought to be prohibited. "Sadism" and "masochism" are broad enough to cover activities which are not necessarily sexually oriented. They could include filmed episodes of physical mistreatment of orphans, child laborers, or inmates of a juvenile detention facility or a child inflicting injury upon himself. Such portrayals would have no sexual appeal except, perhaps, to some tiny segment of society. Either these terms should be deleted or the terms "sexual sadism" and "sexual masochism," found in H.R. 7093, should be used and the legislative history should state what forms of conduct are intended to be covered. The term "nudity . . . depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction" is also troublesome. This definition differs from the "average person" test for obscene material set forth in *Miller* v. *California, supra*, and it would be difficult to determine by what standard the "sexual stimulation or gratification" could be assessed. We would suggest as an alternative definition "lewd exhibition of the genitals," a phrase used by the Chief Justice in *Miller* v. *California, supra*, to describe one of a variety of types of conduct which could be prohibited under state obscenity statutes. Congress could make clear in the legislative history of the bill what types of nude portrayals of children were intended to be encompassed within this definition.

Fourth, the bill should be expanded in two respects. First, the coverage of the bill is limited to "photographs or films" of prohibited sexual acts. Since photographs may very well end up as inclusions within magazines before they are mailed or shipped in commerce, the title of the bill and subsections 8(a)(2), 8(b), 9(a)(1) and 9(a)(2) should be amended to include "printed matter containing photographs" in order to avoid possible problems of admissibility at trial based on the contention that the bill does not include such magazines. Second, since we view the bill as an attempt to deal with the commercial exploitation of sexual activity involving children, subsection 9(a)(2) should be amended to include any person who manufactures, reproduces or duplicates the subject films or photographs with the requisite intent as well as those who receive or sell such films or photographs. This will enable the bill to cover film processing laboratories and others who are instrumental in the distribution process and who are aware of the nature of the material and the use of the mails or facilities of interstate or foreign commerce.

Fifth, there will be difficult problems of proof under the bill. The bill is limited in its application to activities involving children, and the term "child" is defined to mean "any individual who has not attained age sixteen." Since in a great many cases the age of the subject will not be readily apparent from a observation of the film or photograph, the Government will not be able to sustain its burden of proof in such cases unless the actor himself is identified and produced in court or other competent evidence of his age is available. In light of the clandestine fashion in which many of these films and photographs are produced, it will often not be possible for the Government to produce this necessary evidence. In addition, the Government will not be able to prove interstate transportation unless it can establish where the films or photographs were made.

Sixth, the word "knowingly" in the second line of section 8 is unnecessary and should be stricken. It can be established that the defendant knew that he was permitting a child to engage in a prohibited sexual act by proving, as the Government is required to do, that the defendant knew, had reason to know or intended that "such act" would be photographed and the product transported in the mail or in interstate or foreign commerce. In the context in which it appears, "such act" clearly means a prohibited sexual act. Unless "knowingly" is deleted here, the bill might be subject to an interpretation requiring the Government to prove the defendant's knowledge of everything that follows "knowingly", including the age of the child. We assume that it is not the intention of the drafters to require the Government to prove that the defendant knew the child was under age sixteen. In this respect, the bill would resemble 18 U.S.C. 2423, that portion of the White Slave Traffic Act which makes it an offense to knowingly induce or coerce girls under the age of eighteen to travel by common carrier in interstate commerce for immoral purposes. There is no requirement under that statute that the Government prove the defendant knew the girl's age. See *United States v. Hamilton*, 456 F.2d 171 (3rd Cir. 1972).

On the other hand, the use of the word "knowingly" in subsection 9(a)(1) is appropriate to make it clear that the bill does not apply to common carriers or other innocent transporters who have no knowledge of the nature or character of the material they are transporting. To clarify the situation, the legislative history might reflect that the defendant's knowledge of the age of the child is not an element of the offense but that the bill is not intended to apply to innocent transportation with no knowledge of the nature or character of the material involved.

Finally, the penalties are excessive to the point of making convictions extremely difficult to obtain except in the most aggravated cases. We suggest that the penalties should be comparable to those found in 18 U.S.C. 2423, namely, a fine of not more than $10,000 or a prison sentence of not more than ten years or both.

As noted above, we have concerns about the bill, as to both its constitutionality and the problems of proof it creates. We also believe its utility would be limited. Nevertheless, if the changes we recommend are incorporated, the Department of Justice would not object to this legislation.

It is our understanding that many of the photographs and films the legislation would attempt to cover are in fact produced abroad; the legislation would not apply to such materials except for that portion of subsection 9(a)(2) which punishes receipt from foreign commerce. Moreover, with regard to material which is produced in the United States, recent newspaper accounts have indicated that law enforcement agencies who have investigated in this area for years have had little if any success in ascertaining where and how the films and photographs are made and in discovering the persons responsible for making them. Finally, to the extent that such investigations may prove fruitful there are appropriate local statutes and ordinances, such as child abuse laws and laws prohibiting contributing to the delinquency of a minor, which would apply to the conduct made criminal in section 8 of the proposed bill; and we do not think it likely that local prosecutors would hesitate to bring charges. The principal advantage to be gained from enactment of this legislation would be to provide the Federal Bureau of Investigation and the Postal Service with investigative jurisdiction in an area that is basically a local law enforcement problem.

To the extent that section 9 deals with obscene material, the offenses are covered by existing Federal statutes. See 18 U.S.C. 1461–1465. The Postal Service and the FBI have informed us that they presently have several cases dealing with obscene material involving the use of children under investigation. In one respect, the proposed bill is more restrictive than present law because it requires mailing across state lines. The offense denominated in 18 U.S.C. 1461 is complete once material is deposited in the United States mail. Of course, to the extent that the bill deals with material which is not obscene, it is an extension of present law.

I would like to conclude by discussing the provisions which are found only in H.R. 5522.

We are not aware of the existence of any live sex shows traveling in interstate commerce. In the absence of a showing that there is, in fact, a problem to be addressed by Federal legislation, we see no necessity for the provisions punishing an individual who causes or permits a child to engage in a prohibited sex act for the purpose of such a show. In any event, because this provision deals directly with sexual conduct rather than the shipment of materials in the mails or interstate commerce, it would appear to cover conduct peculiarly appropriate for prosecution by local authorities under local sex offense statutes.

That portion of section 2251 that imposes penalties upon an individual who travels in, or otherwise affects, interstate or foreign commerce to induce a child to engage in prostitution would appear to reach an individual who travels in interstate commerce with the intent to induce a child but who takes no further action. If no overt act takes place it would be extremely difficulty to prove a violation, since it would not be possible to establish the defendant's subjective intent. If the defendant, in fact, thereafter induces a child to engage in prostitution, the conduct would be punishable under present law. See 18 U.S.C. 1952, which makes it a criminal offense to travel in interstate or foreign commerce with intent to promote or carry on prostitution activities in violation of state or Federal law, and the White Slave Traffic Act, 18 U.S.C. 2421–2423, mentioned earlier in my testimony, which deals broadly with the transportation of females in interstate of foreign commerce for the purpose of prostitution or other immoral conduct. This latter statute could easily be amended to include the prostitution of males should there be a demonstrated need.

In closing, let me offer the services of the professional staff of the Criminal Division to work with the staff of either or both Committees in developing the best possible legislative approach to the problem of sexual abuse and exploitation of children.

Mr. KEENEY. Mr. Chairman, these bills provide, if I may speak in general terms because we are dealing with a number of bills, substantial penalties for one who (1) permits; (2) photographs or films; or (3) transports in commerce, or (4) receives for sale or sells photographs or films of a child under 16 engaging in a designated sexual act or simulation thereof, if the film or photograph was, or was intended to be, shipped in, or may affect, interstate or foreign commerce.

We support the concept of legislation of this type and have certain suggestions which I will go into at this point. These suggestions include that the bills go beyond the commerce clause in covering what may be shipped in commerce as well as what is shipped and is intended to be shipped in commerce. They also cover what may be filmed or photographed as well as what is filmed or photographed.

The possibility of something happening is an insufficient predication for criminal liability. Both of these deficiencies can be corrected by merely substituting "will" for "may" so that a person would be required to know, have reason to know or intend that the acts in question be photographed and the product shipped in commerce—we note that the concepts of sadism and mascochism are terms broader than necessary if only sexually oriented conduct is intended to be covered.

Also the bills cover photographs and films but might not cover proscribed photographs which are part of a magazine or other publication.

Further, the bills could be more specific so as to prescribe with precision the manufacture, processing and reproduction of the film and photographs so that if that is the congressional intent, persons engaging in this activity would be clearly covered by the statute.

The use of knowledge in section 8 is unnecessary and might require proof that the defendant knew the child was under 16, a result we conclude the Congress did not intend.

On the other hand, we think "knowingly" would be an appropriate insertion in section 9(a)(1) so as to exclude innocent transporters, commercial carriers and so forth who are not aware of the nature of the film or photograph.

Finally, we believe the penalties are excessive, particularly for a first offender, and might create unnecessary problems with judges and juries.

We suggest that the Mann Act penalties of 10 years and a $10,000 fine for a first offender might be more appropriate.

We also have some reservations with respect to mandatory minimums. Our experience in the Justice Department is that mandatory minimum sentences which take away from the court the discretion to sentence are inappropriate for most criminal statutes.

Just as another aside, as between putting the child abuse statute in title 42 or in title 18, the Federal Criminal Code, our preference would be that any statute be put in title 18. That would be consistent with the philosophy of the code revision which is presently before the Congress in putting all or virtually all Federal criminal statutes in title 18 of the Federal Code.

Now there are certain evidentiary problems which might make it difficult to prove a violation of these statutes. One of those is that the statute, of necessity, will require proof of the age of the child. If the child is not available or there is not other competent evidence to establish the age of the child, there would be a failure of proof in this particular respect.

We would also be required to prove where the act took place so as to show the shipment in commerce. That has been one of the problems we have run into in the investigations conducted to date. These are highly mobile, moving operations and we have had some difficulty in establishing where the filming or photographing took place.

Now, turning to what we consider the most serious problem in this legislation, the constitutional problem, we believe that Congress can keep this type of material out of commerce. We also believe that Congress can constitutionally make criminal the production and dissemination of this type of material for shipment in commerce; and I point out by definition most, if not all, of the categories of conduct that are covered by the bill could probably meet the obscenity test of *Miller.*

Further, we might point out that the congressional interest in protecting children from being exploited might well outweigh any first amendment rights of defendants or viewers.

That, I think—if I may, Mr. Chairman—is a very open question, a very serious problem; however, to the extent that Congress intended to cover publications or films in which the offensive conduct is merely a small part of the publication or film, then there is a constitutional problems and the *Miller* test—the *Miller* case in the Supreme Court—the test of viewing the product in its entirety, could be applied and the statute held unconstitutional for overbreadth.

Now in my statement I make reference to "The Exorcist" which is a popular film, socially acceptable. It has one offensive scene in there involving a minor which literally would come within the terms of this statute. Viewed in its entirety "The Exorcist," in our judgment, is not legally obscene, but if this bill were enacted as presently drafted and there were a subsequent shipment in interstate commerce of the film "The Exorcist," it would come within one of the provisions of the bill, I think, section 9.

Insofar as we are concerned, the principal effect of this bill would give jurisdiction to the FBI and the Inspection Service of the Post Office Service to investigate what are essentially local violations.

It would be helpful in situations where the filming is done abroad and shipped into the United States; it would also be helpful where we are dealing with a highly mobile filming or photographing operation and local authorities cannot cope with it.

Mr. Chairman, despite the practical, legal, and constitutional problems that are inherent in legislation of this type, we support the concept of legislation in this area and if the modifications we suggest are adopted, we would be pleased to have the legislation.

I will take any questions, Mr. Chairman.

Mr. BRADEMAS. Thank you very much, Mr. Keeney.

I spoke to you—you ought to be put on warning, that as a nonlawyer I am particularly pleased to be surrounded by lawyers here today, although I am not unmindful of Carl Sandberg's old observation, "Why does the hearse horse snicker when they take a lawver away?"

In any event, your statement has been very helpful and is certainly going to require, on my part, very careful study because you have in effect summarized your statement; you have referred to practical, legal, and constitutional problems, and I wonder if I could ask you to speak a little bit further about the last point, and could you elaborate on the question of how the legislation might be shaped so as to, on the one hand, meet its purpose of preventing the abuse of children for pornographic purposes, while, at the same time avoiding first amendment conflicts?

Mr. KEENEY. Well, one way to do it, Mr. Chairman—it might not carry out the intent of the committees—would be to amend the obscenity statutes and proscribe specifically with increased penalties the utilization of children for this type of filming.

Now also as a parallel act in connection with that, amend the White Slave Traffic Act, the Mann Act, which now only covers the transportation in commerce by common carrier of a female under 18; that could be expanded so that it would cover both females and males and set the age at 16 or 18, whichever Congress deemed appropriate, and broaden the scope of the interstate jurisdiction so there would be jurisdiction and there would be a violation if any instrumentality of interstate commerce were used.

In other words, the plain travel across the boarder of a State would be sufficient and it would not require that the travel be in a common carrier.

We would also suggest—I think this is the intendment of both these committees—I would suggest that we could expand the obscenity laws to include the producers and manufacturers. We have great difficulty in getting at the producers and manufacturers, the people who provide the core material under existing laws. That could be amended.

Now the vice in this as far as Congress is concerned, I will be perfectly candid, is that if we put it in the obscenity laws, we are probably going to have to meet the obscenity test, and the obscenity test would require that this photograph, this film, be viewed in the context of the magazine, the publication, or the motion picture of which it is a part. It would have to be found that the film, the photograph, the magazine appealed to the prurient interest and otherwise met the tests of *Miller*, which would require that it really have no social, artistic, scientific, or politically redeeming features.

But that is something that could be considered by the subcommittees, Mr. Chairman.

Mr. Brademas. I have a number of questions, but because we want to be sure everybody has a chance to ask some, I will just ask you one more, then yield to Mr. Conyers.

You made the point in your testimony, you touched in your testimony on a point that has been a subject of considerable conversation in the Select Education Subcommittee on the part of all of us who are concerned with the matter, as all of us are, and that is, that you felt it would be more appropriate to deal with the particular problem, namely, that of the use of children for pornographic purposes through title 18 of the Criminal Code rather than through amending the Child Abuse Prevention and Treatment Act.

That is a fundamental policy, legislative question that is of very great concern to us, and I wonder if you could explain a little more fully why you make that statement, at least for my own benefit?

Mr. Keeney. First of all, Chairman Brademas, we defer to the Congress' wisdom whether or not it be in title 42 or in title 18.

The only point we are making is that we have a preference as reflected in the so-called S. 1, if I may use the term—I think it is S. 1437 this term—of putting in one place all the Federal criminal violations. It has some merit. I am sure that S. 1437 will not be totally effective in accomplishing that; it is a desirable thing, but it is not a matter of overriding importance, sir.

Mr. Brademas. Thank you very much.

Mr. Conyers?

Mr. Conyers. Well, I want to again commend my good friend from Indiana for establishing the case for brevity with two committees meeting, so I am not surprised that he would do that.

What I would like to do is just take a couple of minutes to describe generally my reaction to this long-awaited statement from the Justice Department, and then you can give me back a general reaction.

The first thing that concerns me, Mr. Keeney, is whether or not we need another law. We must in the Congress honestly confront the fact that this is a pretty sensational subject. We use the language, "is it a 'sexy' bill or not?" In this case, it literally applies all the way.

Now the question becomes whether the existing Federal law is adequate or not, and I cannot see what is wrong with the Comstock law, just for sake of discussion, 18 U.S.C. 1461, our obscenity law, which prohibits mailing and distribution of such material, of obscene material. Couldn't existing law handle this right now?

As a matter of fact, in your statement you observe that by passing additional proposed legislation it would bring in the FBI for investigative jurisdiction. It seems to me we ought to have that, or come close to having it now, and so what I want to satisfy myself with is, is this law necessary; and, secondly, what is the intent of the Department of Justice in terms of prosecutions of this type; and then if you have any notions about what the State enforcement problem might be, I would be interested to know; and, finally, the final question is, how many cases are we dealing with? I mean in terms of all of the pornography violations that there are, how many involve minors in pornography?

And with that collage of questions I will let you pick and choose among them.

Mr. **Keeney**. I have been advised by Mr. Nicholson that the Post Office Service and the FBI now have under investigation 20 cases where children are being depicted as being engaged in what we might describe as hard-core pornography acts.

Mr. Conyers, addressing yourself to "Do we need another law?", we have had a number of convictions in the last year—we had 84 convictions of all types of pornography. They didn't all include children, obviously. We have had some—I believe you have noted in the papers in the last 10 days there have been instances of local proceedings against people engaging in child abuse, the situation in Tennessee being one example—I really can't give you statistics better than that with respect to the scope of the problem.

With respect to handling the problem from a constitutional standpoint, I try to make the point that to the extent that you can treat the offensive conduct in isolation and it can constitutionally be treated in isolation, so that anytime we find the use of the interstate facilities to disseminate or distribute depictions of this conduct, that would be an improvement.

We do have a serious constitutional question though as to whether or not the courts would go along and allow criminal penalties to be imposed where the offensive conduct is found or the portrayal of the offensive conduct is found in what would be a totally acceptable product when it is viewed in its entirety.

I did make certain suggestions, Mr. Conyers, as to alternatives, none of which would be totally satisfactory if the intent of the committees is to totally proscribe the use of interstate commerce facilities for the transmission of this type of conduct.

There are certain things, as I mentioned to Mr. Brademas, that we can do. We could broaden—I think that would be desirable in any event—broaden the Mann Act so it includes males as well as females, and so that it includes all facilities of commerce in addition to common carriers.

Mr. Conyers, this is a very difficult area. I think that Congress has to face up to a very serious public policy issue as to how far it wants to go in testing the constitutional power of Congress to proscribe certain conduct that is obviously offensive to all of us.

Mr. CONYERS. Well, I thank you for your response.

I would like to just share with our colleagues in the Congress that our staff is working on a change in the Mann Act. There are several sections of it and we will keep you advised; and we are aware of that.

Isn't the problem, as I hear you articulating it, a question of how far we want to go in prosecuting people that may be involved in this conduct?

Let's start off with the moviemaker and the procurer and the backer, the parties who are clearly starting out with a notion of breaking the law and of involving young kids in a terrible kind of act. There isn't anything in Federal and State law right now that prohibits a prosecutor, an assistant U.S. attorney, from going after these people all the way right now; isn't that the case?

Mr. KEENEY. There is nothing to preclude the State prosecutors from going against them; that is true. With respect to Federal prosecution under the obscenity laws, we have some difficulty in that the statutes do not clearly cover producers and filmers and so forth.

Mr. CONYERS. Wait a minute. You mean the fellow taking the picture is not covered under the existing law?

Mr. KEENEY. We have to somehow bring in a conspiracy charge, where we have to show they have knowledge of the fact that they are involved in the total conspiracy with the disseminators of the product.

Mr. CONYERS. Well, let me read a summary of the Federal law that I think applies to them: There are presently five Federal laws which prohibit distribution of obsence materials in the United States. One prohibits any mailing of such materials, 18 USC 1461; and another prohibits the importation of obscene materials into the United States. Another prohibits the broadcast of obscenity and two laws prohibit the interstate transportation of obscene materials or the use of common carriers to transport such materials.

In addition, the 1968 Federal Antipandering Act authorizes postal patrons to request no further mailings of unsolicited advertisements.

Now in all of those five Federal laws are you suggesting that a person who deliberately starts out taking obscene pitcure of young people isn't covered?

Mr. KEENEY. He would have to be responsible for the mailing or to have caused the mailing. That is an area where these statutes could be improved.

Mr. CONYERS. Well, couldn't we merely amend any one of these present acts to just include that language in it?

Mr. KEENEY. I suggested that, Mr. Conyers, that I think it would be a good idea, that is, as an alternative that could be done.

Mr. CONYERS. All right. Now let's look for a minute at using your judgment and experience at the State laws. There are a number of State prosecutions going on with pornography. We know it is a new, increasing phenomenon, especially in urban areas. Many of the big cities are in locked battles. In many areas one attorney represents many of the producers and distributors of obscene film and, of course, he stands ready with injunctive relief to go in for any of his clients who are closed down or prosecuted or arrested or padlocked by local police.

Is there any problem that you see broadly with State prosecution being increased at the State level, simultaneously perhaps with us amending the Mann act and making the kind of description of violations that would catch filmers and producers that are associated in the production.

How do you see the State laws, in short, on this subject?

Mr. Keeney. The State laws insofar as the filming or production takes place in an individual jurisdiction, the State laws inasfar as I am aware, in my judgment are adequate. Most of them would come within contributing to the delinquency of a minor or similar child abuse statutes.

I don't have much problem in finding that if you can demonstrate the conduct was done in a State jurisdiction that the State laws, I think all of the State laws, would adequately cover it.

The question of enforcement comes up with respect to State manpower available to enforce; but the question also comes up, Mr. Conyers, in relation to the material that is produced in other jurisdictions and then is exhibited in the particular jurisdiction. I suppose that is where the Federal Government properly belongs because it is an area of difficulty, particularly if you are dealing with something that was produced outside the country and then brought into a particular State.

The State can only proceed if they have an appropriate statute and then against the person who is actually showing the film in their area. They really cannot get at the other people. That is an area where by one means or another, I suppose—I know it is—the responsibility of the Federal Government, the Department of Justice, to try to move into those situations.

Mr. Conyers. Thank you very much. I would like you to send me a breakdown of those cases that have been prosecuted federally after these hearings.

Mr. Keeney. Yes, sir.

Mr. Brademas. Mr. Jeffords?

Mr. Jeffords. Thank you, Mr. Chairman.

I think we ought to focus on the question of whether we are going to be talking in our actions here on child abuse or obscenity, and most of our attention has been focused on obscenity, and it seems to me that if we took an approach more directed at child abuse that we might have more flexibility in our statutes and perhaps be able to approach it from different directions. But before I get into that, I would like to talk a little bit about what you were talking about, that is, enforcement problems. At least from our testimony out on the west coast, the primary problems with prosecutors out there of enforcing the State laws are involved with venue problems and involved in this case of this statute [illegible] ever being able to establish the age and not knowing where the filming took place.

I wonder if you have given any thought or if you might consider the approaches which were taken when we had problems with child labor laws, and that is, to try and rule out abuse of child labor requiring certain things to be done? And primarily I am referring to certification situations where it might be possible for us to require that anyone that produces any film or picture or photograph be required to disclose, and not anything other than disclosure, the time, place and the ages and names and addresses of anyone involved in sexual activities of the age of 18 or under which would have the primary purpose of assisting local prosecution in being able to establish the scene of the crime; and that, combined with similar State statutes, then make the violation the failure of anyone distributing or selling or making this, of doing so without filing such certification or purchasing or distributing or anything, without a certification attached, so that the penalty from a Federal point of view would be merely the filing or the failure to file, the failure to have attached a certificate indicating the names and ages, so we can get out of the obscenity problems and merely help the local prosecutors be able to establish where the scene of the crime took place, and to prosecute under their existing statutes.

I realize that may come to you as a matter of first impression, but I wonder if you might have any thoughts or discussion on that?

Mr. KEENEY. Mr. Jeffords, that is an interesting idea. It was mentioned to me this morning, that thought, and I think it is worth exploring.

I gather that you would have in mind a certification by the producer of a film that all of the persons appearing in the film are under a certain age, over a certain age, 16, I suppose, as in these bills, and also certifying as to where all the scenes in the film were shot?

Mr. JEFFORDS. That is all it would require. "In our film we have a sexual act by a person under age 18; it was filmed in Los Angeles"— whatever location might be necessary, to make sure we establish venue on a specific date," and at that time Joan Smith, age 15, was involved in the production." That is all that would be required.

So we wouldn't have to—there would be no censure aspect attached to the certificate but merely establishing the time and place and where the actions took place; then the States would have that information available to them, or if they didn't certify or try to sell it in the black market, it would be a very easy way of trying to bring the distribution of such material under control, rather than getting involved in the Hustler problems and all the other obscenity problems we get when we try to amend or attach it purely to an obscenity approach.

Mr. KEENEY. I see several problems in connection with it.

I am not sure any of them are insurmountable. I think it is something we should explore.

I think one of the threshold problems we face is that in imposing this penalty on the producers, say, of motion pictures, is it a substantial interference with their first amendment rights. My initial reaction is that it is not.

The second problem is, are we trying to accomplish indirectly what we may feel we cannot accomplish directly; namely, proscribing criminal conduct which would not meet an obscenity test.

The first problem I see is what we in the Department of Justice call the Grosso-Marchetti test; that is, where you require somebody to file a document or make a certification in an area that is surrounded by criminality, and the courts have struck that down. I am not sure that we have a Grosso-Marchetti situation here but I would like to think about all of these areas; I think it is an interesting suggestion.

Mr. **Jeffords.** I want to then move to what I originally talked about, and that is, it seems to me we ought not to focus as much on obscenity as we ought on child abuse, if the conduct we are trying to proscribe is at least—if there is evidence, I suppose, it would take more expert testimony than we may have had on the kind of conduct which we are trying to proscribe here—whether or not it is the abuse of a child.

If it is, as I believe it would be under most independent cases under the Kildee bill, ought we not to take it in terms of child abuse; and it would seem to me we would have much more flexibility as far as getting away from first amendment problems if we looked at it in terms of it being abusive to a child rather than obscene to the viewers or having it looked at in public; and if we proscribe these activities, as we have done in other areas, certainly in the child labor laws, it would seem to me if we were to say, for instance, that some of these activities, abnormal sexual acts, are proclaimed to be abuse of a child, if we could uphold with that expert testimony and call it child abuse rather than obscene material, would we not have more flexibility and more likelihood of being able to meet the first amendment test, especially when we are talking about minors, than trying to deal with it in terms of obscenity?

Mr. **Keeney.** If we deal with it in terms of child abuse, it is obviously a much simpler problem in one respect; but the problem that I tried to address in my statement—I am not certain that the courts will allow us to say that the Congress under the health and welfare clause of the Constitution has constitutional authority to legislate in this area—I am concerned and that is what I was trying to suggest in my statement, maybe the courts wouldn't let us make that dichotomy that you suggest, and I am not certain—I don't know the answer, Mr. Jeffords. I am just suggesting that we are in a problem area and that the courts may get into the first amendment and they may get into obscenity tests in determining whether or not the child abuse legislation is constitutional.

Mr. **Jeffords.** It seems to me that if the courts have allowed us to get into the area of saying you can't work a child over a certain number of hours, especially in mines or areas of hazardous activity, it is hard for me to say, unless we couldn't back it up from any expert testimony, that allowing children to perform abnormal sex acts wouldn't be such a kind of labor activity which we couldn't get at as being against the health and welfare of the children involved.

Mr. **Keeney.** I can understand and appreciate your analogy but I still feel that there is a problem there, Mr. Jeffords.

Mr. **Jeffords.** Thank you.

I would like to ask one final question:

How many convictions have we had under the Mann Act in the last 5 or 10 years?

Mr. **Keeney.** Just a second. We would have to provide that for you. We have got several statutes that deal in the area of that type of conduct, one of which is the so-called Travel Act, 18 U.S.C. 1952, and in the Mann Act. If you wish, we would be glad to try and get together——

Mr. **Jeffords**. I would appreciate that, because it seems to me enforcement is the big problem we are dealing with, and that is why I suggest the other approaches.

Mr. **Keeney**. I might, if I may, finish on Mr. Jeffords' question. I think you will find that the figures on the Mann Act will be highly disproportionate in favor of rings or groups who are transporting women interstate for immoral purposes, and that there would be relatively few that deal with the provision of the transportation of women under 18 in a common carrier, which is a very narrow, restricted statute.

Mr. **Brademas**. Mr. Gudger?

Mr. **Gudger**. Mr. Chairman, just two questions, I believe.

I want to compliment Mr. Keeney on the quality of this brief. It is an excellent résumé, as I read it, of the problems that this bill presents and how they impinge upon existing Federal law.

Yesterday the Supreme Court, I believe, recognized that minors have constitutionally protected rights of privacy. This was declared in a case having some connection with the distribution of nonprescription contraceptives—I think that was written up today in news publications; I have not read the case. It seems though that this case may impinge somewhat upon this problem and I particularly refer to the statement that appears on page 4 of your transcript: "Congress could rationally conclude that children below age 16 are incapable of making a free and understanding decision to participate in the acts which the bill prohibits."

I wonder if this case yesterday impacts upon that conclusion which I think was certainly a valid conclusion in light of the *Ginsberg* case and other earlier decisions? Aren't we now getting into a twilight area of concern here?

Mr. **Keeney**. Well, Mr. Gudger, I wasn't aware of this decision. I was out of town and just got in last night. I didn't even read the newspapers.

My reaction is that the Congress can legislate in this area and they can rationally conclude that children below the age of 16 are incapable of making a rational decision with respect to the type of heinous conduct that these bills are intended to cover.

I think I would still stay with my statement, absent a study of yesterday's decision militating a change of opinion.

Mr. **Gudger**. I think your proposition is sound and that we have a point of departure here which we must have before we can validly step out into this field of frequent Federal intervention.

Now I have no trouble with the proposition which you developed because plenty of case law supports it, that the offender, the violator, does not have to know the age of the victim. This, I think, is fairly established under the Mann Act decisions, firmly established under the statutory rape in State case decisions.

My concern though is this: You illustrate in your brief the difficulty of establishing the fact of age of the subject of this transportation. Say, if we had a Mann Act amendment which made the transportation for immoral purposes of a boy or male under 16 years of age a Federal violation, as the transportation of a woman for immoral purposes by public carrier under 18 years of age is now a violation, how are we going to prove that age factor without the direct participation of the subject child? How are we going to determine that subject child's age in the normal course of investigation without possible invasion of privacy?

Mr. KEENEY. Well, that is an interesting thought, Mr. Gudger. I hadn't thought of it before. You are talking about the invasion of privacy of the child?

Mr. GUDGER. Yes.

Mr. KEENEY. And Congress has mandated an interest in looking out for the welfare of that child. I think that would override any privacy interest in the child concealing information with respect to the background and age; but the problem you address is the same here as with respect to the suggested legislation, that it, in all of these events we would have to prove the age of the child.

Mr. GUDGER. Let me ask you one final question: Since age 16 is your suggestion as to the——

Mr. KEENEY. Not really, Mr. Congressman; age 16 is the age that has been used in all the legislation.

Mr. GUDGER. Your brief mentioned it.

Mr. KEENEY. Because it was reflecting the provisions of the proposed bill, sir.

Mr. GUDGER. What is your situation where you have two persons, say, one age 17, one age 16, going across the State line for this sort of a purpose, by some prearrangement, would the 17-year-old be automatically guilty of the act in connection with the transportation?

Mr. KEENEY. The 17-year-old takes somebody who is under the age interstate for immoral purposes, he would technically, or she, would be technically in violation of the statute. That is an area though, Mr. Gudger, in which we as prosecutors would weigh the circumstances in determining whether or not it would be appropriate to prosecute.

Mr. GUDGER. The reason, Mr. Keeney, for that question, we wrestled with the child molester problem in connection with the development of certain child-molester legislation in the State of North Carolina and had great difficulty in trying to establish what should be the span of years between the violator and the victim of the violation. It is a difficult problem to deal with.

Mr. KEENEY. Somebody with a history, the fact that the perpetrator had a history of child molestation would be a factor that would be weighed in making the prosecutive judgment.

Mr. GUDGER. I have gotten away from the bill itself. I think the brief has very firmly and effectively dealt with the bill and its weaknesses, but I had some concerns about these other areas.

Thank you.

Mr. BRADEMAS. The Chair recognizes the gentleman from Michigan, Mr. Kildee, who has shown particular leadership in this area.

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Keeney, you say you do not feel strongly—you have a preference this be in title 18 rather than title 42—you have no strong feelings where we would put such legislation.

Mr. KEENEY. That is right, sir.

Mr. Kildee. Thank you.

In reading 4571 you mentioned you did not like mandatory minimums. In both 4571 and 7073 we do not have mandatory minimums and I share your feelings on that. We decided not to go to the mandatory minimums. That has been my general feeling for years.

You mentioned that if you use the basic obscenity laws you have to take into consideration the whole work and see how it fits into that whole work and then you mentioned the problems with the films such as "The Exorcist." Well, if we really address this bill to child abuse, and that is what we have tried to do in writing the bill, where we proscribe the filming of certain acts of child abuse and sending and selling of those fruits of that act in interstate commerce, if we really emphasized and make the bill a child abuse statute, it would seem to me then child abuse is child abuse whether it takes place in a million dollar Hollywood studio or in some back alley garage. In other words, if certain acts are proscribed then does the fact that you own a million-dollar studio give you special privilege or whether you can only afford a back alley garage for this act to take place.

In the Exorcist, for example, the act that you are referring to, the question would it, it would seem to me, is that abuse of a child, and if it is abusing a child, then I would submit that no one would have the privilege or right to abuse that child.

Do you think there is any distinction between a Hollywood studio and a back alley garage?

Mr. Keeney. No; I wasn't making the distinction. I was making the distinction between an act, a proscribed act that is in a film or other and what would otherwise be a proscribed act that is in a film or other production that has literary merit.

I understand what you are saying. I understand that we focus on child abuse and I understand that an argument can be made that under the health and welfare clause that Congress has the authority under the Constitution to protect children to the extent that it deems necessary. My problem is that we are moving into the area I am not certain that the courts will allow us to make the distinction when we get involved with matters that might have some literary, political, scientific merit. That is the point. It is the issue as far as I am concerned. That is it right cold.

Mr. Kildee. I do appreciate your brief; I think it is very well done.

Really, whether the courts will allow us to make this distinction whether we can proscribe certain acts of child abuse, then whether we have to determine whether they take place in the context where there is some literary redeeming value to it, whether the courts can say we can proscribe those acts in se, whether the Congress can make that distinction, we won't know the answer to that, will we, until the courts would have a case proscribed by this act before it?

Mr. Keeney. That is right; we will not. We pointed out for both committees the problem that is involved here and if we were certain, which we are not, that the Congress cannot do that, we would have said so and opposed the bill. The problem is, I want to reemphasize, we think the problem is serious, it is a very serious problem, and I think the chances of the bill being stricken down if the obscenity tests are not met is considerable.

Mr. Kildee. So you feel that we have to address ourselves both to child abuse, whether or not Congress has the right to control certain actions of children to protect those children, and also apply the obscenities?

Mr. Keeney. Well, what I am suggesting really is that Congress might take the former approach and might be upheld, the approach might be upheld. The safer approach I am suggesting, to the extent that we can fashion a bill, that will protect children and at the same time meet the obscenity tests, then I think we are home free as far as the constitutional issues are concerned. Speaking for myself, I have no particular problem with respect to the authority of Congress to proscribe the interstate shipment of depictions of an individual child being engaged in the type of acts described in these bills, the designated sexual conduct, deviate and otherwise. My problem is when that product is not viewed in isolation but it is part of a larger context, a film, for instance, where the film has some socially acceptable merit.

Mr. Kildee. We have, by the way, followed your suggestion on the question of sadism and masochism. In H.R. 7093 we put the abjective sexual before those two.

Mr. Keeney. Yes, sir.

Mr. Kildee. To meet your objections there.

I thank you very much, Mr. Keeney.

Mr. Keeney. Thank you.

Mr. Brademas. Mr. Ertel.

Mr. Ertel. Thank you, Mr. Chairman.

I have very few questions. I think they all have been covered very well, and I thought your brief was very good.

I want to go back to the one suggestion that was made here, the suggestion that you put a label identifying where the film was taken or the acts performed and also certifying that the people are under 16 or over 16. Do you really think there would be any useful purpose in that? In fact, would not anybody, who is basically in illicit or the pornographic type activity, just put any kind of label on it, so it would disguise the issue, and then you would still have the same investigatory problems finding out? For instance, in California they might put made in Mexico. You would be right back in the same problem.

Mr. Keeney. We would be back to the same problem in proving that the statement was false when he said it was made in California, when it was made in Mexico. If it is otherwise acceptable, that is something we would like to think about. It would give the advantage of proceeding criminally against the individual for the false certification, then all you would have to prove, it might be difficult, as you suggest, is that the film, that the motion picture, whatever it might be, was filmed in Mexico, whereas he certified it was filmed in California.

It would eliminate some of the other problems with respect to obscenity.

Mr. Ertel. It would eliminate some of the obscenity problems, but the problem of proof would be the same.

Mr. Keeney. Yes, sir.

Mr. Ertel. You would get the same people, locate the same evidence, to prove it is a false statement.

Mr. Keeney. You would have to prove the false statement, you wouldn't have to prove the age of the child. you wouldn't get into the issue of the merits of the film taken in its entirety, and so forth.

Mr. Ertel. You would still have to locate the same people.

Mr. Keeney. Still have to locate some of the same people, yes, sir.

Mr. Ertel. The other question concerning your focus on two different issues. One is the obscenity issue, which is production or film which is taken, and the second involves the child abuse or the child acts. Could we not enact two statutes or put several building clauses in, just defining the acts themselves which then would be prosecutable by those who either condone or permit or help to accomplish, the accomplice-type statute for those involved in child abuse, then define separately the interstate transportation so we could take off the film the product that results? Therefore, we have two different statutes. You might lose the second part of the statute on an obscenity angle but certainly the first would be aimed only at the acts themselves?

Mr. Keeney. Well, in that case, you would be facing head-on an interference with the police powers of the State because what you are proscribing is conduct to take place in California or Illinois, wherever you are filming the child engaged in this sexually explicit conduct, it is found by Congress to be offensive, and that is an area traditionally reserved to the States.

Mr. Ertel. Yes we have to get some connection with interstate commerce or health or education or something with the children which would come under the powers of the Constitution to enforce or to prohibit that kind of conduct.

Mr. Keeney. To give us jurisdiction.

Mr. Ertel. We have to have a jurisdictional basis. I understand that. Then we would have two different parts of a statute, one which has a better chance of remaining for proscription of the acts themselves. It seems to me your concern is basically with the first amendment, which is the obscenity section. If we focus only on the act themselves and find a jurisdictional basis, we would be better off: Then defining, second, the interstate transportation of the film or product, we wouldn't hit the first amendment on the first face of the problem.

Mr. Keeney. I agree with you in theory, Mr. Ertel. The problem is coming up with the jurisdictional basis.

Mr. Ertel. I think that is the whole gist of everything that you have talked about here.

Mr. Keeney. Yes, sir.

Mr. Ertel. What jurisdictional basis would you suggest?

Mr. Keeney. Well, traditionally we use the use of facilities of interstate commerce. We have used affect and it has been used with some affect on interstate commerce and theoretically it could be used. I don't recommend it because basically you are dealing with a local law enforcement problem and you are making, you are getting Federal jurisdiction out of the fact that the filmer, the photographer imports his film, his camera equipment or other things in interstate commerce. It seems to me that we are stretching Federal jurisdiction in going that way.

Mr. Ertel. I guess the question is we may be stretching but is it unconstitutional?

Mr. **Keeney.** I don't know because I think we are invading the police powers of the State and we get into the question as to whether or not it is improper.

Mr. **Kildee.** Would you yield?

Mr. **Ertel.** Yes.

Mr. **Kildee.** Thank you. Just this week or last week the Supreme Court on the gun law extended that a great deal, they stretched that point a great deal, where a criminal in possession of a gun at any point had been involved in interstate commerce, they upheld that statute. Are you familiar with that?

Mr. **Keeney.** I am aware of the decision, Mr. Kildee, but it was a gun that traveled in interstate commerce at one time. The jurisdictional element was clearly there. The only question before the Court was whether or not the transportation of the gun in commerce had to come before or after the conviction, and they said it was all right for Congress to proscribe it where the interstate transportation was prior to the conviction.

Mr. **Kildee.** It did surprise the attorneys, the Supreme Court's extention of that.

Mr. **Keeney.** It surprised me, too, Mr. Kildee.

Mr. **Kildee.** Thank you.

Mr. **Ertel.** Thank you very much.

Mr. **Brademas.** Mr. Biaggi.

Mr. **Biaggi.** I only have one observation, Mr. Chairman. I am sorry I wasn't here to listen to your testimony. However, we have been dealing with the problem for some time. The question that seems to plague all of us, and we all have a mutual objective, is the question over constitutionality. We have had witnesses testify, witnesses who are scholars of the constitution, who have said that legislation could be enacted to deal with the behavior of man. This would not be an encroachment on the first amendment. But I think the last remark you were surprised by the Supreme Court's decision, I would suggest that we do the best we can in connection with the problem of legislation and submit it to the Supreme Court and perhaps they will surprise us. I refer to history when President Roosevelt had the Congress enact the National Recovery Act. It was clearly unconstitutional and it was contended at this point there was a critical problem in our nation that needed dealing with. By the time that act was declared unconstitutional the problem had been met and resolved.

I suggest that constitutional or otherwise, which will be an open question until the courts decide, that legislation dealing with this problem forthrightly would have similar effect. Most of the people involved in my judgment are just merchants out there trying to make money and they know there is no penal sanction at this point. Once a law falls in place, with personal sanctions, the results might be rather salutary in that there will be a fall off of production and penalty may not be worth the profit. That is my only observation, Mr. Chairman.

Mr. **Brademas.** Mr. Railsback.

Mr. **Railsback.** Thank you, Mr. Chairman.

May I ask, Mr. Kenney, I think it ought to be very, very apparent from all of our questions that I think we are kind of struggling with the legislative problems of drafting a Federal statute that would deal in a meaningful way with child abuse or child exploitation, and I have rather quickly read your brief and I must say that I share with you many of your concerns.

Is it a fair characterization to say that you think there are real problems in drafting a statute that would make it a Federal offense to deal with the problems of, say, child prostitution as contrasted with obscenity?

Do you think we have real constitutional problems drafting what I will call a child exploitation statute or child abuse statute?

Mr. Keeney. Well, the only problem there I would see with child prostitution, the problem would be looking for, as suggested by Mr. Ertel, a jurisdictional hook so there wouldn't be invasion of the police power of the State.

Mr. Railsback. I understand that. If you were sitting where we are and you were aware of a problem that appears to be a very persuasive one, a very great one, I am wondering what you think the best solution would be to deal with that kind of problem, forgetting just the literary publications or the obscene publications, but dealing really with child abuse, where somebody is really capitalizing upon and abusing a child.

Mr. Keeney. Well, I don't have serious problems with that where there is abuse of the child and we are dealing with the abuse of the child in isolation, and we have a jurisdictional basis for the Federal Government to act, Mr. Railsback. I think that is an area in which the Congress can act. I see no substantial problem.

Mr. Railsback. What is the jurisdictional basis in that case? That is what I am struggling with. What do you think the jurisdiction nexus is?

Mr. Keeney. The jurisdictional basis is in that situation would be that Congress would have to determine that under the health and welfare clause it felt it had to act to protect children in this situation. Then we are faced head-on with the problem before the courts as to whether or not the health and welfare clause of itself gives the Congress the Federal Government jurisdiction in this area, and they would have to balance off the rights reserved to the States because what we are dealing with here is an invasion of the police powers of the State.

Mr. Railsback. I agree with you. What, if anything, could the Department of Justice do, for instance, in helping in the formulation of some kind of uniform statute? Has the Justice Department ever been involved in that kind of an activity?

Mr. Keeney. A uniform statute for the States?

Mr. Railsback. Yes.

Mr. Keeney. We have to the extent there is a mechanism. The Council of State governments in which we have representation and we have been involved from time to time with various States on this specific council. I don't know but it seems to me that that is not the problem, that insofar as my experience is concerned the State statutes are adequate insofar as covering the conduct. The problem is for the States to deal with, they have a problem to deal with and it's a question of whether or not they can handle it. The statutes are there. I think the problems are enforcement.

Mr. Railsback. May I just indicate my disagreement with you on that. I have been led to believe that there were something like six

States that had meaningful child abuse statutes and that there are now 22 some States that are considering new laws, so I don't know how you can say that the States have acted, at least not very many of them. Maybe I am wrong on that.

Mr. **Keeney.** Well, when I say child abuse statutes, I am talking about virtually all of the States having statutes which proscribe constributing to the delinquency of a minor.

I would be very much surprised if all of the States didn't have statutes that could in one manner or another cover the type of conduct that is being described in these bills when you are dealing with minors.

Mr. **Railsback.** Maybe I am in error. But if you had heard the testimony that we have heard to date, including the chairman of the States attorneys association, you would get the strong feeling there has been a demonstrated unawareness of the pervasiveness of the problem. There are also apparently, according to many, great difficulties in even prosecuting child abuse cases under the existing statutes.

In other words, I am inclined to think that you are not aware of the seriousness of the problem or pervasiveness of it. I must say I wasn't either until I heard the testimony that we have heard.

Mr. **Keeney.** Mr. Railsback, I don't purport to be an expert on the State laws on child abuse. All I was giving you was my reaction based on my experience as a lawyer. It seems to me that State laws are broad enough to cover these problems, that the problems are less lack of adequate laws than enforcement problems. If you are right, then through the council of State governments or some other mechanism effective State laws should be sought.

Mr. **Railsback.** OK, thank you.

May I ask one further question. Would you favor a law that, you alluded to, using the health and welfare clause, in other words, do you favor that kind of law? You have suggested that might be one jurisdictional basis for us to legislate. Do you favor us doing that?

Mr. **Keeney.** That is a difficult question, Mr. Railsback, I see it as an area permeated with problems but I think in the final analysis if that is the best effort that can be made in the area of child abuse we would favor it.

Mr. **Railsback.** Thank you very much.

Mr. **Brademas.** Mr. Miller of California.

Mr. **Miller.** I have no questions, Mr. Chairman.

Mr. **Brademas.** Mr. Pressler.

Mr. **Pressler.** No questions.

Mr. **Brademas.** Does any member have another question? Mr. Jeffords.

Mr. **Jeffords.** First, I would like to briefly for Mr. Ertel's purposes and others explain what I think a certification system would work and I have one other question.

If we required just a certification at the time of the filming before it can be distributed in interstate commerce, with the names, dates, all the information necessary to establish the area and scene of the crime, then require an attachment of certificate to whatever is distributed in interstate commerce, then you have a situation where you can quickly and immediately bring this under control and provide the necessary information for enforcement, if you combine it with State laws which require similar certification so that you can't claim it was done within the State. Then you would be able to either prosecute for false information on a certificate for failure to have a certificate. All you would have to do is check to see where the certificate was fouled. Obviously, very quickly, whoever was accepting the certification would know that they won't probably have to check many materials, but if it was Joe Smut's picture they would want to check and see if the certificate was fouled and they could do it.

Mr. Ertel. But the point being you are going to get the underground operators certifying it was done in a foreign country.

Mr. Jeffords. Yes, sir.

Mr. Ertel. Every one of them, when you have a movie set or any kind of set, you are not going to be able to tell by looking at a film where in fact it was. I don't think that is going to add jurisdictional basis, to the venue, and you are not going to be able to locate anybody as a result. If the guy is going underground with it he is going to go all the way.

Mr. Jeffords. You modify your import laws to require the certification, I think you can clamp down to it all.

I would like to briefly ask what kind of problems do we get into when we try to prove something is child abuse when we get into this area when you have the question whether it is child abuse or obscenity. I don't know whether you can comment on that. If we say such as these activities are child abuse, what are we going to have to prove to the courts?

For instance, let us say, take the Exorcist, suppose we were trying to prove having a child simulate masturbation was child abuse, what kind of evidence would we have to produce in the courts to be able to prove that was in effect abuse of the child?

Mr. Keeney. There is a psychological impact on a child that either engaging in this conduct for profit or engaging in the simulation of of the conduct for profit and that is what we would be dealing with. Proving the impact on the child, the psychological effect.

Mr. Jeffords. Would that be subjective or could it be objective?

Mr. Keeney. I think you could draw some objective inference from this type of conduct, at least a psychiatrist could.

Mr. Jeffords. Do you think there is some conduct that would be objective and some that would be subjective?

Mr. Keeney. I think Congress in legislating in this area is making an objective finding that this is conduct that is not appropriate and it is conduct that a child of this age is incapable of protecting himself against and, therefore, Congress is legislating to provide that protection.

Mr. Jeffords. Obviously, I would think, for instance, a nude picture, some people would consider a nude picture of a child as being child abuse. We have had people who have said they would. Do you think a court would just because Congress said that taking a picture of a child nude is child abuse would say that without any additional proof it is child abuse?

Mr. Keeney. I wouldn't say so, no.

Mr. Jeffords. Mr. Conyers.

Mr. Conyers. A final question. Is it correct, Mr. Keeney, to observe that the obscenity test that is derived from *Miller* would apply and does apply not only to the existing Federal laws but would apply to any law that we have under consideration about pornography and young people?

Mr. Keeney. In as far as children are concerned?

Mr. Conyers. Yes.

Mr. Keeney. Well, I think that is the real problem, Mr. Conyers, and that is what I have been trying to say here, is that if we can view this, if we can view child abuse as child abuse and not as part of any literary effort, then we have got a much simpler problem, but I am not certain that the courts will allow us to do it. I am afraid that, well, we have to recognize the fact that the courts may read into any child abuse legislation the first amendment standards and would apply the *Miller* test.

Mr. Conyers. Now, the one thing that gets us part way around that is that the obvious hardcore pornography that we are talking about in terms of the magazines and the films clearly have no redeeming value whatsoever. The closer question would come where those who would attempt to anticipate this kind of question would start trying to simulate some redeeming social or scientific interest in the question. Would you agree with that?

Mr. Keeney. Yes. The clear hardcore material would be covered under the proposed legislation, it would also be covered under the existing obscenity laws, except that the existing obscenities laws could be amended so that we would more clearly bring within their gambit the producers and permitters and whoever else is involved in the total production and dissemination of the material.

We do have a grab bag there, the people who are sponsors for the production of the film and its filming and so forth turn it over to somebody else for distribution. Use of interstate commerce facilities is not in connection with the orginal effort—thus we have a prosecutive problem. That is an area that could be addressed.

Mr. Conyers. Very good. I am grateful to you for your testimony and your prepared statement. I would like to suggest to my colleagues who are chairing these hearings that perhaps both our subcommittees would want to in the relatively near future meet together without witnesses to go over these legal considerations that have been raised here and will probably continue to be raised with other witnesses.

Mr. Brademas. If the gentleman would yield, I think that is a sensible suggestion because I think we all want to try to frame a bill that will respond to the problem and not run into constitutional difficulties and write the best bill possible. So I would certainly welcome that. I am sure members of our subcommittee would and I am glad to hear you feel members of your subcommittee would.

Mr. Keeney. We are at the service of the committees.

Mr. Brademas. I think it would be helpful also, Mr. Conyers, if we could get the Justice Department at some point into helping us on this matter so that we can respond to some of the concerns that have been voiced here today.

Mr. Miller. If I might ask one question. Is it your testimony that there seems to be two avenues—we keep talking about approaching the problem—is to go the child abuse avenue and the other some type of obscenity standard? If you were to go to the child abuse route you may find the *Miller* test folded in on the question of what you are doing to peoples' first amendment rights.

Mr. Keeney. Exactly.

Mr. Miller. And when we talk about this as it is related to children, we talk about as if that is as of today a distinctly separate clause, the fact that you use children in a magazine or photograph or movies show makes that unacceptable to the community. Let us say in the *Miller* standard on its face that is not necessarily so, would it be?

Mr. Keeney. I am not sure I understand the question.

Mr. Miller. The *Miller* standard, as I understand it, provides what a community finds acceptable and nonacceptable.

Mr. Keeney. Yes, sir.

Mr. Miller. The simple fact that you have young children depicted would not lessen that standard necessarily in terms of your burden of proof, would it? We would assume as laymen it would. The question is legally does it lessen your burden of proof?

Mr. Keeney. I think the *Miller* test would—is a single test for both adults and children but let us be honest and candid. A jury, a judge, a Supreme Court, where children are involved, are going to take a little different view of it and I think we do have a little more leeway when we are dealing with children.

Mr. Miller. Then the reason I raised the situation, we heard testimony in Los Angeles of a publisher who publishes a magazine which depicts young children, which it is his claim this is done for the purpose of the nudist community, that they have been publishing this magazine, a very small publication, for 25 or 30 years. Under this legislation, it seems to me on its face you have a clear violation, but under the *Miller* test, not necessarily so. Would that be correct?

Mr. Keeney. I wasn't quite clear as to your example. It was a picture of just nude children?

Mr. Miller. Just nude children in a nudist camp setting. He claims it is for people who enjoy this mode of life.

Mr. Keeney. If we are dealing with nudity and nothing——

Mr. Miller. Pardon?

Mr. Keeney. I think we are getting into a different area if we are dealing with nudity and nothing else. The various bills that we are discussing, I think most of them have in addition to nudity, they have some sort of a sexual conduct, heterosexual, or deviate-type conduct.

Mr. Miller. They go into the question of simulation.

Mr. Keeney. Which is offensive as far as children are concerned. Nude pictures of children presumably would not necessarily be deemed offensive by——

Mr. Miller. Or necessarily that small part of the Exorcist or that small part of the American Graffiti, where you have a scene with a young child.

Mr. Keeney. It is more than nudity.

Mr. Miller. It is more than nudity but again it is a question of community standards and what a jury, as you say, let us be sensible, what would the jury say about the Exorcist, a film that earned over

$100 million and people were going to the American Graffiti where parents dragged their children to see their life style of the 1950's. They wanted their kids to see what it was like to hang out at a drive-in. Also in the flic was a scene where a 12-year-old girl gets a date with an 18-year-old guy and somebody would find that stimulating, I am sure. That test still remains taken as the whole, whether it is a nudist magazine, whether it is Exercos or whether it is a blatant child pornographic film or magazine.

Mr. KEENEY. Yes, if we are dealing with obscenity laws per se and if we are not dealing with some other constitutional power of the Congress.

Mr. MILLER. Thank you.

Mr. BRADEMAS. Mr. Keeney, thank you very much for your time and effort in answering our questions. Your observations have been most helpful to us in understanding these difficult problems.

Mr. KEENEY. Thank you.

Mr. BRADEMAS. We are pleased next to call our distinguished colleague, Hon. John M. Murphy, a Member of Congress from New York.

TESTIMONY OF HON. JOHN M. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. MURPHY. Thank you, Mr. Chairman. It is a pleasure and I appreciate the opportunity to appear before this unique meeting of two subcommittees on behalf of legislation which Mr. Kildee and I have submitted on behalf of approximately 142 cosponsors, a little more than 32 percent of the House.

I believe the breadth of that support indicates an overwhelming nationwide response to a problem which, until recently, was swept under the rug.

Both the subcommittees here have already held hearings on the bill, so I need not describe in great detail the horrible use of children in pornographic materials. Previous witnesses have graphically outlined the type and scope of available materials, and more important, the abuses to which the children involved are subjected. Almost without exception, everyone agrees that some sort of legislation is necessary—that "something must be done"—and most agree that the legislation before the subcommittees is an excellent vehicle. I shall therefore not take additional time in repetitive statements of the problem, but will instead address myself to the legislative solution.

In much of the testimony preceding mine, there seem to have been two major recurring themes of concern. One focused constitutional and first amendment reservations, and the other on the language in the bill and some possible redundancy with already existing statutes, and in a few instances, some alleged misdirection of our bill.

I would, therefore, like to give the subcommittees the benefit of an author's perspective, so that the all-important aspect of legislative intent can be successfully molded into an acceptable and effective law.

Let me first point out that we cannot take comfort in existing statutes. They simply do not work. There are five Federal laws, for example, which prohibit the distribution of obscene materials. One prohibits mailing, one blocks importation, one proscribes broadcast, and two prohibit interstate transportation or use of common carriers to transport obscene materials. But all have a single major failing, in addition to their lack of specificity regarding the use of children. Before any can be enforced, it must first be determined that the materials are, indeed, obscene. The courts, including the Supreme Court, have been trying for decades to arrive at a suitable and acceptable guideline. None have surfaced.

A Library of Congress study done at my request indicates that while 47 States have legislation governing display of obscene materials to minors, only six States have had the insight to prohibit the use of minors. Everyone seems concerned with physical abuse, neglect, and similar problems, but there has been very little legislative cognizance of sexual and emotional disabilities which result. And finally, many existing techniques of prosecution depend either on witnesses to a crime, or on catching someone "in the act." The nature of the pornography industry makes either case unlikely. And we already have ample evidence of the unenforceability of obscenity statutes, as well as the apathy such as allowed a Chicago man to continue publishing his "chickenhawk" magazine on the prison printing press.

All this points to the need for State legislation which parallels Federal statutes. The Congress is limited to an interstate jurisdiction, and the bill before you is drafted in such a fashion. It does not presume to be the final answer for cessation of all pornography, but a reasonable starting point upon which to develop this and other approaches to an exceptionally difficult problem.

Let me underscore that point. The bill does not try to function within existing obscenity parameters. The word "obscenity" does not appear, nor is it intended to apply, in this bill. Our bill does not presume to define the listed sexual acts as obscene; rather, it defines them as prohibited when children are involved. The focus of the bill is on the sexual and emotional abuse of the child per se, rather than whether such an abuse might be obscene. So much for obscenity.

There has been considerable commentary regarding the language, definitions and verbal structure of the bill. Mr. Kildee and I are the first to admit that we are not constitutional scholars. The purpose of the bill is to present a base of operation which provides ample opportunity for refinement, clarification, fleshing out and modification in the congressional process. Let me touch on a few points.

Some of the observations of allegedly "broad language" are well-taken. For example, our definition of "other sexual activity" might be made more specific by substituting such a phrase as "other genital or anal conduct or activity." Similarly, we might add the word "knowingly" just before ". . . receives," which would help to protect the innocent bookstore operator who cannot control the content of his wares. However, I would very strongly argue against an alteration which would change the language to "knowingly cause." Such a loophole would allow a producer/entrepreneur to simply place his money into a blind venture, with instructions to return a handsome profit, but to keep him ignorant as to the source of the profits.

There is a substantial legal precedent for such an approach in our contributory negligence laws. Even though you might run through a red traffic light without knowingly breaking the law, you are still liable for the resulting manslaughter when you hit a pedestrian or another vehicle.

I must also oppose a change in the age limitations stated in the bill. The age of 16 was not an arbitrary choice. It is the existing Federal age of sexual consent where Federal jurisdiction applies, such as military installations, Indian reservations, et cetera. Suggestions to lower the line of demarcation to the age of puberty ignore the differences in rates of development between girls and boys, or from one child to the next. What might be considered under such a phrase to be legal for an early-blooming 9-year-old would be illegal for his or her slow-growing 12-year-old brother.

There has been a suggestion that we consider the licensing of filmmakers, requiring a certification that the children they might use be of an appropriate age. I contend such a requirement is futile. The burden would be placed upon legitimate producers who want to comply with the law, while those pornographers who are already breaking the law by their actions are highly unlikely to worry about not filling out another Federal form which, in effect, would constitute an admission of either guilt or perjury.

Another area which might be further defined includes the commercial showing of pornographic films involving children, where the product is not sold, but rather, tickets or admission. I would suggest we incorporate language which would preclude the commercial showing or display of such materials involving children, where tickets or admission is charged (such as a theatre or a quarter-machine found in the back of bookstores), or where any other solicitation is made for a showing before an audience . . . which would preclude advertising, or a "pass-the-hat" money collection at a stag party showing.

Any fears that enforcement and prosecution of this legislation would differ from region to region have ignored the nature of the bill: It is a Federal law, and as such would have suits initiated by a Federal district attorney, not a local prosecutor. And scenarios which depict a vindictive judge imposing execessive penalties also ignore an American tradition called "trial by jury." Exceptions can be formulated for every law on the books. We have allowed some dicretion by the judiciary.

I would also have to admit to a slight lapse in technological awareness when our bill was drafted to speak of photographs or films. It seems that a medium such as video tape might not be covered under such language. I would therefore suggest that a substitution might be in order to include "any photographic or electronic visual image, depiction, or representation."

Exception has also been taken with our inclusion of the simultation of a sexual act on film. I believe this to be a necessary restriction, since pornography depends on the presentation of sexual acts in all their forms. If penetration does not occur, or a pre-pubescent child cannot "perform" the sex act to conclusion, the filmed result is no less pornographic in nature. Their lucrative show simply continues with a different camera angle or different perversion on the nonerect performer.

The legitimate movies and stage productions have also been mentioned as affected by the legislation at hand. While I agree that they might, indeed, be affected, the fact that the legitimate theater chooses to portray sexual activity among children does not lend any respectability to the act, or to its filming and distribution. Pornographic materials are not limited to those produced by pornographers. The only difference in the portrayal of identical acts by the pornographer or the legitimate theater is perhaps the quality of the product and the channels in which it is distributed. The depiction of the delowering of an 8-year-old girl is no more acceptable simply because 20th Century Fox brought it to the silver screen, or David Merrick brings it to Broadway. The bill does not take issue with talking about the event, only its actual depiction. Thus, such scenes as the one in Remeo and Juliet which include a bedroom scene are not affected. In that case, the script obviously picked up after the sex act, which was not viewed by the audience.

Finally, I would like to address some of the concerns about the effect of this legislation upon our first amendment rights. I would underscore the remarks of Charles Rembar, the attorney who handled the cases of Lady Chattlerley's Lover and Fanny Hill, when he appeared before this subcommittee. He offered his opinion that this bill "does not run afoul of the first amendment. The first amendment," he said, "deals with expression, not with behavior or conduct." I wholeheartedly agree. The first amendment is not absolute. There are laws against libel, slander, invasion of privacy, making false statements in securities sales or in criminal conduct, and so on. It is totally absurd to suggest that the first amendment protects my young daughter's rights against being libeled or having her privacy invaded, but that pornoraphic films of her would be protected as some pervert's freedom of speech.

Similarly, the ACLU's position is ludicrous. They have stated before this subcommittee that the abuse of the child should certainly be dealt with, but once those abusive films are made, we should not restrict their interstate movement. The ACLU suggests we should go after the producers. And that is precisely what we have done.

A child of 5 simply does not hop in a cab to go to his local pornographer to shoot a "skin flick." In every instance there is the guidance of an adult who is in the business for the money. The best, and perhaps the only way, to attack the problem is by removing the economic incentives. Production will stop if there is no market for the results, or if the penalties for transporting and marketing make it impossible to do business economically or profitably. Do not confuse pornographers with molesters. There is a difference between those who are in it for the money and those who are mentally ill. Some, of course, fall into both categories. But our bill deals with the economic reality of pornography, and the growing marketability of children on film.

I would also point out that there is ample precedent for our legislation in other fields. The most obvious are the existing child labor laws, which say in essence that the fruits of oppressive child labor may not be shipped or sold in interstate commerce.

This presents an interesting paradox in which a film or book might be seized if it were produced with the use of children behind the camera underoppressive conditions—substandard wages, long hours, dangerous surroundings—but the moment the child steps in front of the camera, some magic transition is alleged to have occurred which protects the film as an expression of ideas under the first amendment. That is absurd.

Other supportive legislative precedents include laws regarding contributory negligence, accessory after the fact, as well as before and after the fact, statutory rape, contributing to the delinquency of a minor, and so forth. All require certain types of proof for prosecution. In the legislation before you, the films, magazines, books, and the like are their own evidence—the fact that children have been used is obvious, and prosecutable.

The ACLU says we should enact no more laws, but should enforce the existing obscenity statutes. Yet they are in the vanguard of those who violently attack those statutes as unconstitutional. If the ACLU will simply choose which side of the fence they wish to remain on, we can pursue their point of view in a rational manner.

Let me close by reminding both subcommittees that the bill before them is not an antiobscenity bill. It is aimed at stopping the sexual abuse and emotional annihilation of hundreds of thousands of children nationwide in the gutter industry of pornography. If the defenders of the child-abusing pornographers will allow the filming of their own naked children, with or without sexual congress, for sale around the country in sleazy bookstores or out of car trunks, then I might be able to accept the sincerity of their arguments.

Interviews with social workers who must deal with children warped for life by early sexual abuse show that they consider as a successful termination of their case the simple expedient of getting the case off their books and into any other agency except their own. While that indicates an important shortcoming in our social welfare structure, it also indicates the seriousness—and virtual impossibility—of dealing with the wrecked lives of these children.

The problem must be dealt with before the abuse occurs, at the very core of the pornography industry—its economic foundation. Many years of overturned obscenity cases have shown the futility of that approach. Our legislation makes in financially unsound, and legally fearsome, to even consider the use of a child in such a manner. And remember that our bill only applies to children, not consenting adults. A 7-year-old child is in no position to consent, or even to understand, the events surrounding him.

I trust that both subcommittees will view the bill in the manner which was intended: A vehicle to be refined, strengthened, broadened, and ultimately passed into a law which is absolutely necessary to protect our children from the most vicious creatures that breathe, the pornographers who live off the blood of children.

Mr. BRADEMAS. Thank you very much, Mr. Murphy.

Mr. Conyers?

Mr. CONYERS. I wanted to commend by colleague for the fervor and the emotion with which he obviously invests in this subject matter and also assure him that this subcommittee will be very careful in exploring the benefits that he recommends as the ultimate necessity of additional legislation.

There are a number of things that I would want to discuss with him further on the record, but will do it off the record because we do have a serious time problem now.

You should be aware, however, that the American Civil Liberties Union before the subcommittee on crime was not opposed to additional legislation. They were concerned about the constitutional question which if you heard the representative from the Department of Justice before us, indicate under my questioning that the obscenity test is going to apply no matter what law that we come up with, and even the bills that are now under consideration are going to when they reach the courts be subject to the same test that has already been erected by the courts.

So we are very mindful of these kinds of pitfalls and we would like to do more than just add another bill to the box, so I think we are all grateful to our colleague for coming before us.

Mr. **BRADEMAS.** Mr. Jeffords?

Mr. **JEFFORDS.** No questions other than to echo the comments of the chairman of the Subcommittee of the Judiciary.

Mr. **BRADEMAS.** Mr. Gudger?

Mr. **GUDGER.** I want to commend Congressman Murphy upon the sincerity and effectiveness of his presentation. I come from one of those six States that have been trying to deal effectively in this area, and have a very sincere appreciation of your concern, your objectivities, and share your desires to see some legislation develop here.

I will not undertake any questions at that time. I have already indulged to some degree in questioning the previous witness who testified. But I do look forward to discussing this matter with you personally.

Mr. **BRADEMAS.** Mr. Miller?

Mr. **MILLER.** Thank you, Mr. Chairman.

Congressman Murphy, just one question. You comment on page 5 in your statement on the question that had been raised regarding perhaps the requirement of certification as to the appropriate age of children, and you claim that "The burden would be placed upon legitimate producers who want to comply with the law, while those pornographers who are already breaking the law by their actions are highly unlikely to worry about not filling out another Federal form which, in effect, would constitute an admission of either guilt or perjury."

It seems to me there is some merit to certainly looking at that proposal in the sense that legitimate filmmakers, since we have just heard very possibly "The Exorcist" would be in trouble, a legitimate filmmaker who still wants to make the scene now, maybe wants to use an 18-year-old female who looks 14 or 15, or whatever, for the purposes of carrying out what he conceives to be his product, can say, "I am not prepared to use a young child for this purpose, yet I want to make the film in this way."

Also, it seems to me more for the illegitimate filmmaker person using minors for profit on expiration you have a handle by which to really intercept and grab the product.

Mr. **MURPHY.** To address the question of that particular film I think the producers generally agree that scene was not necessary to the plot and they could have done without it where they use a child who falls in this category. But the question of filling out a form and filing it just seems to me to be another form that only legitimate businesses and legitimate producers would comply with.

Mr. Miller. It is a little bit like also filling out our tax forms. It is just another form until you do it illegally and do it with the purpose of committing fraud and then it becomes more than that form. It becomes a piece of evidence and a vehicle by you would start the search or vehicle by you can match the product against the evidence, and that would be my concern, because they may or may not, people may have conceded now because it has been used so many times. As an example, "The Exorcist" could have been made without that scene but somebody exercised their sense of filmmaking and made that film, or as was pointed out by Richard Dreyfuss, the actor, in "American Graffiti," the point would be, should they have the ability to avoid prosecution, and still not be brought by censorship, have a vehicle by which to escape it in the legitimate filmmaking industry.

Mr. Murphy. I would say that would be a matter for the committee's judgment. I just expressed my own personal feeling on it.

Mr. Brademas. Mr. Murphy, I want also to join my colleagues in expressing warm appreciation to you for your statement and I am well aware of your own deep interest in this problem and your concern we shape some legislation to deal with it responsibly.

Because I must go to another meeting, I am going to ask the gentleman from Michigan, the chairman of the other subcommittee, to assume the chair, and then if he finds it necessary to in turn go to another meeting, ask the gentleman from California, Mr. Miller, the ranking Member on our side, to assume the chair.

Again, Mr. Murphy, I want to thank you and especially want to thank my colleague from Michigan, Mr. Conyers.

Mr. Conyers. I want to thank you. Are there any questions further of the gentleman from New York. Mr. Murphy?

We want to thank our colleage for his contribution. He can be assured we will take his recommendation into very thorough consideration.

[The prepared statement of Hon. John M. Murphy follows:]

STATEMENT BY HON. JOHN M. MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, I thank you for the opportunity to appear before this rather unique joint session of two House Subcommittees on behalf of the legislation which Mr. Kildee and I have submitted on behalf of approximately 142 cosponsors—30 percent of the House of Representatives. I believe the breadth of that support indicates an overwhelming nationwide response to a problem which, until recently, was swept under the rug.

Both the subcommittees here have already held hearings on the bill, so I need not describe in great detail the horrible use of children in pornographic materials. Previous witnesses have graphically outlined the type and scope of available materials, and more important, the abuse to which the children involved are subjected. Almost without exception, everyone agrees that some sort of legislation is necessary—that "something must be done"—and most agree that the legislation before the subcommittees is an excellent vehicle. I shall therefore not take additional time in repetitive statements of the problem, but will instead address myself to the legislative solution.

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Some of the observations of allegedly "broad language" are well-taken. For example, our definition of "other sexual activity" might be made more specific by substituting such a phrase as "other genital or anal conduct or activity." Similarly, we might add the word "knowingly" just before ". . . receives," which would help to protect the innocent bookstore operator who cannot control the content of his wares. However, I would very strongly argue against an alteration which would change the language to "knowingly cause." Such a loophole would allow a producer/entrepreneur to simply place his money into a blind venture, with instructions to return a handsome profit, but to keep him ignorant as to the source of the profits.

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I trust that both Subcommittees will view the bill in the manner which was intended: a vehicle to be refined, strengthened, broadened, and ultimately passed into a law which is absolutely necessary to protect our children from the most vicious creatures that breathe: the pornographers who live off the blood of children.

Mr. CONYERS. Our next witness is the Chief Postal Inspector of the U.S. Postal Service, Mr. C. Neil Benson. Mr. Benson has a prepared statement which we will without objection have reproduced in full into the record. That will allow you to summarize or proceed as you choose, Mr. Benson.

[The prepared statement of Mr. Benson follows:]

STATEMENT OF C. NEIL BENSON, CHIEF POSTAL INSPECTOR ON CHILD PORNOGRAPHY

Chairmen and members of the two subcommittees, my name is C. Neil Benson and I am Chief Postal Inspector of the Postal Inspection Service. Accompanying me is Inspector Kurt Similes, manager of our prohibited mailings branch at our national headquarters. I appreciate the opportunity to appear this morning to discuss legislation concerning the sexual abuse and exploitation of children. I might note at this time that we have already supplied the subcommittee staff with some examples of child pornography which we have acquired in the course of postal-related investigations. Upon request, we can exhibit additional material to the subcommittee members or staff. To avoid compromising possible prosecutions, however, we do not wish to insert such material in the record at this time.

Before discussing our activities in the area of child pornography, I would like to briefly touch upon the history and composition of our organization. The postal inspection service traces its origin to the year 1777, making it the oldest law enforcement and investigative agency of the Federal government. Our present complement of personnel numbers about 5,600. This includes about 1,700 postal inspectors, 152 special investigators, and 2,600 security police officers.

Under 39 United States Code 404(a)(7), the Postal Service has the specific power to investigate postal offenses and civil matters relating to the postal service. As the law enforcement arm of the Postal Service, the postal inspection service enforces some 85 federal criminal statutes. Postal inspectors have statutory authority to serve subpoenas and warrants and to make arrests under 18 United States Code 3061. Generally, our investigative responsibilities fall into three main categories—

The investigation of all violations of federal statutes relating to the Postal Service;

The protection of mail, postal funds, and postal property; and

The internal audit of Postal Service operations.

The United States Postal Service and its criminal investigative arm—the postal inspection service—enforce several federal statutes concerning the mailing of pornographic material. Any investigation of child pornography would necessarily be carried out within the framework of these statutes, none of which specifically addresses the question of sexual exploitation of children. We have attached copies of the relevant statutes and statistical data regarding their enforcement for your convenience.

The first of the relevant postal statutes—the "pandering advertisements" statute, 39 United States Code 3008—affords a measure of self-protection to individual mail recipients. It allows an individual who receives an advertisement which he, "in his sole discretion," believes to be "erotically arousing or sexually provocative" to obtain an administrative postal service order which directs the mailer of the advertisement to refrain from further mailings to his address. Violation of this administrative order may subject the mailer to injunctive proceedings in federal district court. Since the inception of this statute in 1968, the Postal Service has issued about 500,000 such orders.

The Postal Inspection Service has investigative responsibility for the "sexually oriented advertisements" statute, 39 United States Code 3010 and 3011 and 18 United States Code 1735–1737. This statute also affords the individual mail recipient protection against the receipt of unwanted sexually oriented mail matter. It requires the Postal Service to maintain a list of persons who do not desire to receive unsolicited sexually oriented advertisements and prohibits the mailing of such material to any individual whose name and address have been on the list for more than 30 days. This list contains the names of about 320,000 customers. In order to effect the purposes of this statute, the list is made available to mailers upon the payment of a service charge.

The Postal Service may request the attorney general to file a civil action against a mailer who sends a sexually oriented advertisement to an individual on the list. Criminal penalties are provided for willful violations of the statute and for the sale, rental, or misuse of the list maintained by the Postal Service.

I would like to mention at this point that the pandering advertisements statute and, in particular, the sexually oriented advertisements statute have been successful in cutting down the number of customer complaints received by the Postal Service. In fiscal year 1970, the United States Postal Service received 284,26 complaints regarding sexual advertisements. In fiscal year 1976, this number had decreased to 31,157. Although some of this decrease may reflect changing public attitudes, we believe it is preponderantly due to the fact that mailers, in their own self-interest, are learning to channel sexually oriented mailings away from those individuals who do not want to receive them.

Finally, the Postal Inspection Service is charged with investigative responsibility for the postal obscenity statute, 18 United States Code 1461. This section contains the basic restriction of the use of the mails to distribute pornographic material. In language dating, in part, from 1865, it forbids the mailing of "every obscene, lewd, lascivious, indocent, filthy or vile article, matter, thing device, or substance."

Violation of this statute is punishable by five years' imprisonment, a $5,00 fine, or both, and penalties are doubled for recidivists.

The postal obscenity statute affords a good deal of prosecutorial flexibility Under a 1958 amendment to Section 1461, a criminal action may be brought against a mailer not only in the jurisdiction where the material is deposited for mailing, but also in any district through which it passes, and in the district of address. The postal obscenity statute has been sustained repeatedly in the court as a proper exercise of the postal power delegated to Congress under Article I Section 8, of the constitution.

The main thrust of our enforcement efforts in this area—in accordance with guidelines set by the Department of Justice—is directed toward major dealer who use the mails both for advertising and selling of pornography. We develop evidence from complaints of recipients of unwanted mail matter, from advertisements mailed to postal inspectors using test names, and on the basis of advertisements appearing in tabloids offering mail order pornography for sale. The results of our investigative efforts are presented to United States attorney to be considered for prosecution. We closely coordinate our efforts in this area with the Department of Justice to ensure that our investigative and prosecutive interests coincide.

Our investigations of child pornography are conducted within the ambit of the statutes which I have described. Accordingly, in these investigations we look for evidence of mailings which could be considered to violate statutes under our investigative jurisdiction. As a practical matter—although the postal obscenity statute does not deal specifically with child pornography—we believe that the "shock value" of such material should make cases involving it especially attractive from a prosecutorial standpoint.

At this point, I should also mention that we notify local authorities who have jurisdiction over laws regarding child abuse and related topics in any case in which we uncover evidence of matters which may be their particular concern.

Our total investigative environment includes child pornography. However, past experience has shown us that child pornography tends to account for a relatively small but stable portion of the total market in mail order pornography. The greater part of this material appears to have originated in the foreign market, or to have been reproduced domestically from imported matter. In consideration of these factors, we must defer to Congress regarding the need for legislation specifically addressing child pornography.

Our review of proposed child pornography legislation has focused on provisions which might make it difficult or impractical for us to develop the evidence to support a successful prosecution of a mailer of child pornography.

Among these provisions, which are also addressed from a prosecutorial standpoint in the statement of the Justice Department, are—

> The requirement that the government establish the age or identity of a child participant in a pornographic production;
>
> The requirement that the government establish the defendant's knowledge that individuals depicted in pornographic material are less than 16 years old; and
>
> The requirement that the government establish that material has been mailed across state lines.

Significant revisions would be necessary to make the proposed legislation workable from an investigative point of view.

In general, we concur with the detailed critique of the legal issues and problems in this area presented by the Justice Department. We would be happy to consult with the subcommittee and the Justice Department in the development of legislation which would avoid the technical, practical, and constitutional problems in the proposed bills.

This concludes my prepared statement. At this time I would be glad to answer any questions you may have.

§ 3008. Prohibition of pandering advertisments

(*a*) Whoever for himself, or by his agents or assigns, mails or causes to be mailed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postal Service to refrain from further mailings of such materials to designated addresses thereof.

(*b*) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postal Service shall issue an order, if requested by the addressee, to the sender thereof, directing the sender and his agents or assigns to refrain from further mailings to the named addresses.

(*c*) The order of the Postal Service shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addresses, effective on the thirtieth calendar day after receipt of the order. The order shall also direct the sender and his agents or assigns to delete immediately the names of the designated addresses from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressees.

(*d*) Whenever the Postal Service believes that the sender or anyone acting on his behalf was violated or is violating the order given under this section, it shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for its belief and request that any response thereto be filed in writing with the Postal Service within 15 days after the date of such service. If the Postal Service, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, it is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing compliance with such notice.

(*e*) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdicton, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be punishable by the court as contempt thereof.

(*f*) Receipt of mail matter 30 days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

(*g*) Upon request of any addressee, the order of the Postal Service shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

(*h*) The provisions of subchapter II of chapter 5, relating to administrative procedure, and chapter 7, relating to judicial review, of title 5, shall not apply to any provisions of this section.

(*i*) For purposes of this section—

(1) mail matter, directed to a specific address covered in the order of the Postal Service, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postal Service's order; and

(2) the term "children" includes natural children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.

§ 3010. Mailing of sexually oriented advertisements

(*a*) Any person who mails or causes to be mailed any sexually oriented advertisement shall place on the envelope or cover thereof his name and address as the sender thereof and such mark or notice as the Postal Service may prescribe.

(*b*) Any person, on his own behalf or on the behalf of any of his children who has not attained the age of 19 years and who resides with him or is under his care, custody, or supervision, may file with the Postal Service a statement, in such form and manner as the Postal Service may prescribe, that he desires to receive no sexually oriented advertisements through the mails. The Postal Service shall maintain and keep current, insofar as practicable, a list of the names and addresses of such persons and shall make the list (including portions thereof or changes therein) available to any person upon such reasonable terms and conditions as it may prescribe, including the payment of such service charge as it determines to be necessary to defray the cost of compiling and maintaining the list and making it available as provided in this sentence. No person shall mail or cause to be mailed any sexually oriented advertisement to any individual whose name and address has been on the list for more than 30 days.

(*c*) No person shall sell, lease, lend, exchange, or license the use of, or, except for the purpose expressly authorized by this section, use any mailing list compiled in whole or in part from the list maintained by the Postal Service pursuant to this section.

(*d*) "Sexually oriented advertisement" means any advertisment that depicts, in actual or simulated form, or explicitly describes, in a predominantly sexual context, human genitalia, any act of natural or unnatural sexual intercourse, any act of sadism or masochism, or any other erotic subject directly related to the foregoing. Material otherwise within the definition of this subsection shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical, or other work the remainder of which is not primarily devoted to sexual matters.

§ 3011. Judicial enforcement

(*a*) Whenever the Postal Service believes that any person is mailing or causing to be mailed any sexually oriented advertisement in violation of section 3010 of this title, it may request the Attorney General to commence a civil action against such person in a district court of the United States. Upon a finding by the court of a violation of that section, the court may issue an order including one or more of the following provisions as the court deems just under the circumstances:

(1) a direction to the defendant to refrain from mailing any sexually oriented advertisement to a specific addressee, to any group of addressees, or to all persons;

(2) a direction to any postmaster to whom sexually oriented advertisements originating with such defendant are tendered for transmission through the mails to refuse to accept such advertisements for mailing; or

(3) a direction to any postmaster at the office at which registered or certified letters or other letters or mail arrive, addressed to the defendant or his representative, to return the registered or certified letters or other letters or mail to the sender appropriately marked as being in response to mail in violation of section 3010 of this title, after the defendant, or his representative, has been notified and given reasonable opportunity to examine such letters or mail and to obtain delivery of mail which is clearly not connected with activity alleged to be in violation of section 3010 of this title.

(*b*) The statement that remittances may be made to a person named in a sexually oriented advertisement is prima facie evidence that such named person is the principal, agent, or representative of the mailer for the receipt of remittances on his behalf. The court is not precluded from ascertaining the existence of the agency on the basis of any other evidence.

(*c*) In preparation for, or during the pendency of, a civil action under subsection (a) of this section, a district court of the United States, upon application therefor by the Attorney General and upon a showing of probable cause to believe the statute is being violated, may enter a temporary restraining order or preliminary injunction containing such terms as the court deems just, including, but not limited to, provisions enjoining the defendant from mailing any sexually oriented advertisement to any person or class of persons, directing any postmaster to refuse to accept such defendant's sexually oriented advertisements for mailing, and directing the detention of the defendant's incoming mail by any postmaster pending the conclusion of the judicial proceedings. Any action taken by a court under this subsection does not affect or determine any fact at issue in any other proceeding under this section.

(*d*) A civil action under this section may be brought in the judicial district in which the defendant resides, or has his principal place of business, or in any judicial district in which any sexually oriented advertisement mailed in violation of section 3010 has been delivered by mail according to the direction thereon.

(*e*) Nothing in this section or in section 3010 shall be construed as amending, preempting, limiting, modifying, or otherwise in any way affecting section 1461 or 1463 of title 18 or section 3006, 3007, or 3008 of this title.

§ 1735. Sexually oriented advertisements

(*a*) Whoever—

(1) willfully uses the mails for the mailing, carriage in the mails, or delivery of any sexually oriented advertisement in violation of section 3010 of title 39, or willfully violates any regulations of the Board of Governors issued under such section; or

(2) sells, leases, rents, lends, exchanges, or licenses the use of, or, except for the purpose expressly authorized by section 3010 of title 39, uses a mailing list maintained by the Board of Governors under such section;

shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense.

(*b*) For the purposes of this section, the term "sexually oriented advertisement" shall have the same meaning as given it in section 3010(d) of title 39.

Added Pub. L. 91-375, § 6(j)(37)(A), Aug. 12, 1970, 84 Stat. 781.

§ 1736. Restrictive use of information

(*a*) No information or evidence obtained by reason of compliance by a natural person with any provision of section 3010 of title 39 or regulations issued thereunder, shall, except as provided in subsection (c) of this section, be used, directly or indirectly, as evidence against that person in a criminal proceeding.

(*b*) The fact of the performance of any act by an individual in compliance with any provision of section 3010 of title 39, or regulations issued thereunder, shall not be deemed the admission of any fact, or otherwise be used, directly or indirectly, as evidence against that person in a criminal proceeding, except as provided in subsection (c) of this section.

(c) Subsections (a) and (b) of this section shall not preclude the use of any such information or evidence in a prosecution or other action under any applicable provision of law with respect to the furnishing of false information.

Added Pub. L. 91–375, § 6(j) (37) (A), Aug. 12, 1970, 84 Stat. 781.

§ 1737. Manufacturer of sexually related mail matter

(a) Whoever shall print, reproduce, or manufacture any sexaully related mail matter, intending or knowing that such matter will be deposited for mailing or delivery by mail in violation of section 3008 or 3010 of title 39, or in violation of any regulation of the Postal Service issued under such section, shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for any second or subsequent offense.

(b) As used in this section, the term "sexually related mail matter" means any matter which is within the scope of section 3008(a) or 3010(d) of title 39.

Added Pub. L. 91–375, § 6(j) (37) (A), Aug. 12, 1970, 84 Stat. 781.

§1461. Mailing obscene or crime-inciting matter

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and—

Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement or notice of any kind giving information, directly or indirectly, where, or how or from whom, or by what means any of such mentioned matters, articles, o things may be obtained or made, or where or by whom any act or operation o any kind for the procuring or producing of abortion will be done or performed or how or by what means abortion may be produced, whether sealed or un sealed; and

Every paper, writing, advertisement, or representation that any articl instrument, substance, drug, medicine, or thing may, or can, be used or applie for producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or appl any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mai or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, o delivery of anything, declared by this section or section 3001(e) of Title 3 to be nonmailable, or knowingly causes to be delivered by mail according to th direction thereon, or at the place at which it is directed to be delivered by th person to whom it is addressed, or knowingly takes any such thing from th mails for the purpose of circulating or disposing thereof, or of aiding in th circulation or disposition thereof, shall be fined not more than $5,000 or in prisoned not more than five years, or both, for the first such offense, and shall fined not more than $10,000 or imprisoned not more than 10 years, or both, f each such offense thereafter.

The term "indecent", as used in this section includes matter of a charact tending to incite arson, murder, or assassination.

As amended June 28, 1955, c. 190, §§ 1, 2, 69 Stat. 183; Aug. 28, 1958, Pub. 85–796, § 1, 72 Stat. 962; Jan. 8, 1971, Pub. L. 91–662, §§ 3, 5(b), 6(3), 84 St 1973, 1974.

PANDERING ADVERTISEMENTS STATUTE

(39 U.S.C. 3008—Enacted 1968)

600,000 Postal Customers Filed Requests for Prohibitory Orders.
490,000 Prohibitory Orders Were Issued by the Postal Service.
5,500 Enforcement Actions Were Taken Against Violators.

SEXUALLY ORIENTED ADVERTISEMENTS STATUTE

(39 U.S.C. 3010/11; 18 U.S.C. 1735–37; Enacted 1970)

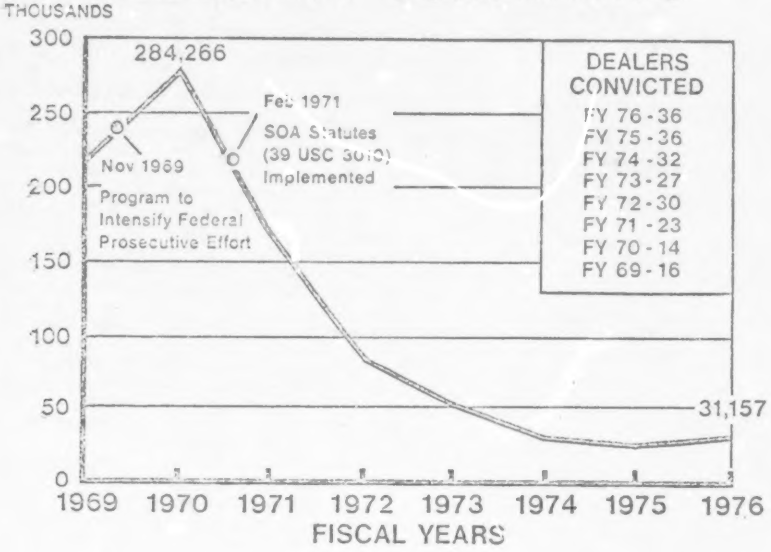
Court actions

Since implementation of the SOA Statutes in May 1971, a total of 18 civil actions have been filed by U.S. Attorneys. (The majority of these actions were taken against violators whose individual mail volume ranges from 200,000 to 2,000,000 pieces annually.)

Sixteen of the above civil actions were adjudicated in favor of the Government. Two cases were dismissed. Thus far, no criminal action has been taken under 18 U.S.C. 1735–37.

320,663 postal customers currently have their names listed on the Postal Service list pursuant to this statute.

POSTAL CUSTOMER OBSCENITY COMPLAINTS



OBSCENITY INVESTIGATIVE PROGRAM, POSTAL OBSCENITY STATUTE (18 U.S.C.1461, ENACTED 1865) FEDERAL PROSECUTIVE STATISTICS

Fiscal year	Indictments	Convictions	Fines imposed	Sentences (years)[1]	Estimated gross annual income[2]
1970	60	14	65,793	NA	$5,26[illegible],778
1971	54	23	258,538	NA	9,565,343
1972	40	30	193,346	NA	4,645,063
1973	27	27	298,292	72	8,760,238
1974	47	32	207,482	109	6,379,655
1975	49	36	289,780	115	20,964,783
1976	30	36	137,489	107	6,664,905

[1] Sentences consist of prison terms, probation and suspensions.
[2] Data derived from the records of prosecuted commercial obscenity dealers.

TESTIMONY OF C. NEIL BENSON, CHIEF POSTAL INSPECTOR, U.S. POSTAL SERVICE, ACCOMPANIED BY KURT SIMILES, MANAGER OF PROHIBITED MAILINGS BRANCH

Mr. CONYERS. If you would introduce the assistants with you, we welcome you before the committees, the Select Education Subcommittee of the House Committee on Education and Labor and the Subcommittee on Crime of Committee on the Judiciary.

Mr. BENSON. Thank you, Mr. Chairman.

My name is C. Neil Benson and I am Chief Postal Inspector of the Postal Inspection Service. Accompanying me is Inspector Kurt Similes, manager of our Prohibited Mailings Branch at our national headquarters.

We would appreciate the opportunity to comment on this legislation that is pending before your committees. I will briefly try to summarize some of the things that the Postal Service is involved in in enforcing postal obscenity laws.

We, the Postal Inspection Service, are primarily responsible for the investigation of all criminal laws involving the Postal Service. In addition, we provide protection and security for the Postal Service and have the internal audit function. In the area of obscenity through the mail, we investigate and assist in enforcing the Pandering Advertisements Statute, 39 U.S. Code 3008, which affords a measure of self-protection to individual mail recipients.

This particular statute permits a customer of the Postal Service to indicate that he is erotically aroused by the sexual advertisements which he has received upon his sole discretion. He may ask the Postal Service to issue an administrative Postal Service order which directs the mailer of the advertisements to refrain from further mailings to his address.

Since the inception of the statute in 1968, the Postal Service has issued about 500,000 such orders. We are also responsible for and have the investigative jurisdiction over the Sexually Oriented Advertisements Statutes, 39 U.S. Code 3010 and 3011, as well as 18 U.S. Code 1735–1737.

These statutes provide that the Postal Service maintain a list of persons who do not desire to receive unsolicited sexually-oriented advertisements and prohibits the mailing of such material to any individual if his name has been on the list for 30 days.

The list presently contains the names of approximately 320,000 citizens of this country.

In addition, the statutes provide that, we can request the Attorney General to file a civil action against a mailer who sends the sexually oriented advertisement to an individual on the list.

Finally, the Inspection Service is charged with the Postal Obscenity Statute, 18 U.S. Code 1461. This section contains the basic restrictions for the use of the mails to distribute pornographic material. In language dating back to 1865 or so, it prohibits mailing of any obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device or substance.

Violation of the statute is punishable by 5 years imprisonment, a fine of $5,000, or both. We have attained a great deal of prosecutorial flexibility under this particular act. Under the act, we can prosecute in the venue where the piece of mail is deposited in, any district through which it passes, or in the district of address.

The thrust of our enforcement effort in this area, in accordance with guidelines set by the Department of Justice, is directed toward major dealers who use the mail both for the advertisement of and for selling of pornography.

We develop evidence from complaints by recipients of unwanted mail matter, from advertisements mailed to postal inspectors using test names, and on the basis of advertisements in tabloids offering mail order pornography for sale.

Our investigations of child pornography are conducted within the ambit of the statutes I have described. Accordingly, in these investigations we look for mailings which could be considered to violate statutes under our investigative jurisdiction.

As a practical matter, the Postal Obscenity Statute does not deal separately and specifically with child pornography. However, we believe that the shock value of this type of material should make cases particularly attractive from a prosecutorial standpoint.

We see a few provisions of the pending law which would make the investigation of these particular offenses somewhat difficult. The first one is the requirement that the Government establish the age or identity of the child participant in the pornographic production. I think it would be evident that the age of the child is sometimes difficult to determine, particularly as they come closer to the age of 16, and the identity of the child is very difficult to ascertain.

The second point is the requirement that the Government establish the defendant's knowledge that individuals depicted in the pornographic material are less than 16 years old.

I think here would be a serious problem for all of us.

The third one is that this particular law requires the Government establish the material had been mailed across State lines. Normally, in all the other postal statutes it is only necessary that the piece of material enter the mail stream; it doesn't mean that it has to be carried by mail across State lines from one State to another. Entering the mail stream is the Federal offense, whether it is carried one block or across the country.

With that brief summary of my prepared statement, Mr. Similes and I stand ready to answer any questions you may have.

Mr. CONYERS. We want to thank you very much for joining us. I have only three questions.

Can you describe for me specifically how you view the problem from the postal point of view? After all, almost all of this pornographic activity which brings us here today travels in interstate commerce. There is every indication that there are clubs and mailing lists, magazines, film distributions, advertisements in magazines, so that all of this is literally dependent on the mails for existence.

Do you experience any problem in reporting, detecting, and cooperating with prosecuting authorities, both Federal and State, in terms of bringing this pornographic material to a halt?

Mr. BENSON. I think that the problem in our Service is not identifying the material so much because we do receive complaints from people.

The problem is in determining what is obscene. That, of course, is the problem for the courts.

We might feel it is obscene, we might even convince a prosecutor it is obscene, but sometimes the jury doesn't necessarily agree.

Mr. Conyers. That is not your problem. I want to find out what your problem is from the postal point of view.

Mr. Benson. Well, I don't think we have a particular problem in investigating this type of crime.

Mr. Conyers. Why do we have so much of it then? In other words, what can you tell us before these two subcommittees so that we can help put an end to what is viewed generally as an enlarging, rapidly expanding area of activity that we consider illegal and mostly immoral? In other words, where do you come out? Is everything OK and, if not, what ought we be doing about it?

Mr. Benson. I think we could, the Congress could, in some fashion, make the obscenity depicted by children more better defined and separate, a separate law, if it is possible.

However, because this would involve, it may not involve more cases, but it would involve an easier prosecutive function. Let me ask Mr. Similes.

Mr. Similes. Briefly, let me briefly describe the pornography industry as a highly competitive business. Obviously we know that. There is a need to accelerate the elicitness in order to meet the market conditions like we have seen over the years, a steady increase in the type of material that is pushed upon the public.

As the chief inspector said, we do view the obscenity problem in total. We do have a positive investigative program. As an example, to answer your direct question, how deep is the problem? We have currently approximately 100 outstanding investigations in the pornography area, including all types of pornography. Approximately 13 of those investigations deal with child pornography.

Only yesterday we obtained an indictment in one child pornography case in San Francisco. The case has moved forward. The prosecutive climate is certainly there, wherever we have the evidence to present the cases.

Mr. Conyers. Let me ask you a simple question. You pick up a magazine and here is a perfectly horrible advertisement about pornographic film. You are outraged. Somebody's grandmother would be similarly outraged. What do you do? You are the postal authority on obscenity. Do you go out and you call up the U.S. Attorney and say, "Here we have got one. Let's go," or do you read it and say, "There is nothing much we can do," or do you pretend you don't see it. What happens?

Mr. Similes. The answer is we immediately investigate each and every instance.

Mr. Conyers. Then I have got 10,000 cases for you to immediately investigate.

Mr. Similes. We will look at each case——

Mr. Conyers. Doesn't somebody read the magazines over there?

Mr. Similes. If I may complete my answer—we investigate, considering the guidelines that have been established for us by the Department of Justice.

Mr. CONYERS. What are they?

Mr. SIMILES. The guidelines are that the Federal prosecutive climate is to prosecute major obscenity dealers, to prosecute dealers in child pornography, to prosecute those dealers where we have established an organized crime connection.

Mr. CONYERS. Wait 1 minute. You cannot do that. You just read the magazine. It doesn't say, "produced by organized crime." I mean you cannot make that judgment. But what do you do? We have got hundreds of magazines, obviously lewd, obviously porno, mostly hard core, some involving kids. You say you make an immediate investigation. You must have a file then of 2,000 or 3,000 possible organizations that you are investigating.

Mr. SIMILES. Not necessarily. We find that the major distribution comes from only very few sources. We prioritize our investigations. We first investigate complaints received from the public who have received unsolicited advertisements or who have seen advertisements to which they object.

Mr. CONVERSE. We have a record vote on the conference report on the export-import amendments so we stand in recess for a few minutes. Excuse me.

[A brief recess was taken.]

Mr. CONYERS [presiding]. The subcommittee will come to order, please.

Mr. Benson and Mr. Similes, we are grappling with the notion of of just what does the post office do when obviously pornographic material comes to your attention, which must be almost every day, given the fact that the mails are loaded with magazines and advertisements, solicitations, clubs, and all the other activity of which we know.

Could you describe the procedure and the arrangements that you have with the Department of Justice in this connection, please?

Mr. BENSON. I think Mr. Similes can describe them best.

Mr. SIMILES. Our procedure first of all, Mr. Conyers, is that we cannot see every piece of mail or the content of every piece of mail going to the——

Mr. CONYERS. Could you move the microphone?

Mr. SIMILES. I would like to describe the procedure first.

For obvious reasons we cannot see the contents of every piece of mail, so we cannot be aware of every piece of pornographic material sent, particularly through sealed mail. We do recognize certain magazines contain advertisements for pornography, and also some of that pornography would not meet the legal definition of obscenity.

We do recognize these advertisments. We also review the complaints we get from the customers which, incidentally, have dropped from over 280,000 in 1970 to less than 30,000 this year. Based on that review, which is done by our inspectors in the field, we try to identify, again based on judgment and training, the source of the material, which would have to fall within the ambit of the guidelines established by the Department of Justice as a national major distributor.

The Department of Justice has asked us, informed us—we are in daily contact—that we should focus our attention from a prosecutive standpoint on investigations of major dealers; we identify the necessary evidence through test purchases of material, if necessary, and we then review each individual investigation with the Department of Justice at national headquarters to determine the totality of the investigation—whether it has prosecutive merit consistent with the Department of Justice policy.

Mr. Railsback. Would you yield?

Mr. Conyers. Yes.

Mr. Railsback. May I ask you, if you can, to give us some numbers on successful cases that have been turned over, how many cases you have turned over? In other words, if you can give us some statistical breakdown, I think it will be very helpful to us.

Mr. Similes. Yes, I can say in fiscal year 1976, we turned over for prosecutive action and received 30 indictments against pornography dealers and, as a matter of fact, we had 36 convictions during the same fiscal year.

Attached to Mr. Benson's statement is a chart relating to these activities. If I may ask Mr. Benson, I will review that for the record.

The chart reflects that in fiscal year 1970 we had 60 indictments and 14 convictions. These convictions do not necessarily relate to the indictments of that year; they may be convictions of indictments for prior years.

In 1971 we had 54 indictments and 23 convictions; 1972, 40 indictments and 30 convictions; 1973, 27 indictments and 27 convictions; in 1974, 47 indictments and 32 convictions; in 1975, 49 indictments and 36 convictions; and in 1976, as I said, 30 indictments and 36 convictions.

I can furnish the fines imposed, the sentences rendered, and possibly the estimated gross annual income for each of the prosecuted offenders per year.

Mr. Miller. Could we hear what the fines were?

Mr. Similes. Would you like them individually by year or an average?

Well, they were in excess of $65.000 in 1970; and in 1971 there were $258,538; 1972, $193,346; and 1973, $298,292; 1974, $270,482; 1975, $289,780; and 1976, $137,498.

Mr. Miller. That is the total?

Mr. Similes. Fines for those years in cases prosecuted under 18 U.S.C. 1461.

Mr. Miller. That was total fines, so in 1976 you had 36 convictions, you had a total of $137.000?

Mr. Similes. A total of 107 years in sentences consisting of prison terms, probations and suspensions were also imposed.

Mr. Miller. With business doing a gross income of $6.664 million?

Mr. Similes. That is estimated gross.

Mr. Miller. Thank you.

Mr. Conyers. Now, if I might ask you, how many organized and unorganized activities in pornography do you estimate are extant about the country today?

Mr. Similes. That is a difficult question. I would require a guess. Obviously, we don't know all of the activities. At one time, I believe around 1968, we did an in-house review, and, again, it had to be an estimate; and we thought that the pornography industry at that time was operated by approximately 20 to 25 people around the Nation.

Mr. CONYERS. You are suggesting organized crime?

Mr. SIMILES. Not organized crime, organized activities, big firms, because the organized crime connection is a relative thing. Obviously, I couldn't begin to guess that.

Mr. CONYERS. Do you know or suspect of the existence of organized crime in pornographic activities?

Mr. SIMILES. We do, sir.

Mr. CONYERS. Can you expand on that a little bit as to what extent?

Mr. SIMILES. Again, I couldn't guess as to what extent. We do have some indication now and we know in the past there has been some. We know there is some organized crime infiltration.

Mr. CONYERS. Well, how many organized groups do you suspect or can estimate are in pornographic activities in the United States today?

Mr. SIMILES. I couldn't answer that, sir; I don't know.

Mr. BENSON. I think when you say an organized group, there are numerous enterprises which you might term a Mom-and-Pop-type operation, and that could be an organized group, although it may be only two people. But our prosecutive and investigative emphasis has been on the major dealer types, and the figures that Mr. Similes has given you are related to what we term major dealers normally doing several million dollars business. They are responsible for mailing to hundreds of people, thousands, and in fact sometimes hundreds of thousands.

Mr. CONYERS. How many of them are there in the country?

Mr. BENSON. Well, according to our estimate—we can't really tell you—but there are probably 25 or maybe more major dealers in operation.

Mr. SIMILES. To be totally responsive to your question, Mr. Conyers, in areas where we find child pornography, for instance, we do not rely on inquiry into the fact as to what size the operation is; we investigate immediately and find out whether we can bring that operation to a standstill. That is part of the agreement with the Department of Justice, that the size of the operation is not of the essence when it comes to child pornography.

Mr. CONYERS. How many such organizations are under investigation?

Mr. SIMILES. Thirteen.

Mr. CONYERS. For their activity in child pornography?

Mr. SIMILES. Thirteen right now.

Mr. CONYERS. Is that all?

Mr. SIMILES. Right.

Mr. CONYERS. There must be more than 13, unless this flood of magazines, film, advertising and activity that we understand to be going on, it would be hard for me to think that there are only 13 groups of any size involved in kiddie porno at this point.

Mr. SIMILES. I didn't say they were the only ones involved; I said they are the only ones we know of and——

Mr. BENSON. That are using the mails. We should point out, of course, our investigative jurisdiction requires use of the mails. So if you are talking about an operation which avoids the use of the mails, in other words, they ship it into this country outside the mails and it is then transported by interstate transportation in some fashion and distributed over newsstands in New York City, the mails have not been used and are not being used, we therefore have no investigative jurisdiction.

Now the FBI does have an investigative jurisdiction in interstate transportation, and if I remember Mr. Keeney's testimony this morning, he said there was a total of about 20 cases of this type under investigation and if ours are 13 theirs could be 7.

Mr. Conyers. My final question, have you noticed any acceleration in this kind of activity in the country?

Mr. Benson. We think we notice a definite acceleration in the sale of this type of material, yes.

Mr. Conyers. Then how did it drop in the number of complaints you have received?

Mr. Benson. The drop in the number of complaints is due to a large number of factors. We don't, of course, separate our complaints by type of fetish that is being complained about, just by the number of complaints. You can't ignore the changing mores of the country, which obviously has had an impact on the dropping of complaints, as well as the fact that since 1968, I believe, we can get the customer's name off the mailer's list. Accordingly, he might complain one time because he is receiving this unsolicited material, but when his name is taken off the list, he doesn't complain again because that was satisfactory to him.

Mr. Conyers. Thank you. Mr. Jeffords.

Mr. Jeffords. Yes. I believe maybe you got into some of these problems before I was able to return.

I would like to get into the problems that you have. When we were out on the west coast we had considerable evidence and ended up with the officials kind of blaming the prosecutors and the prosecutors blaming the judges and the laws and then we had the real circle as to what the real problem was.

I wonder from your point of view, as far as Mr. Conyers pointed out, really removing this stuff or being effective in it, what is your biggest problem, what do you face, is it the prosecutors, that they don't prosecute the investigations, or what is your problem in doing your job?

Mr. Benson. I don't think we can complain about the Justice policy on prosecution provided its in a major dealer type of case. Their policy is to avoid prosecution in the "Mom and Pops" because I imagine the manpower would be prohibitive.

I still go back to my original statement the definition of obscenity is the major problem and this is why these cases are very long, they are always appealed, there is very, very high-powered legal authority on both sides, and the issue is not as plain as many people would like it to be. Obviously we do not fully understand what obscenity is and the question is resolved in the courts in each case, and then it is further resolved usually after several appeals.

Mr. Jeffords. In talking to law enforcement officers, I used to be attorney general, I am concerned about doing the job rather than passing the law. Out there their main problem seemed to be in this area, one, of course the question you talked about, definition of obscenity under their statutes, and the difficulty of enforcement, but also ever proving as to where the scene of the crime was, as to venue in their case, whether it was in their district or county or city, depending on the enforcement officer, or whether it was even produced in this country.

I wonder if you believe those are realistic problems that they are discussing?

Mr. **Benson.** Well, I think they are probably more true in some of the other investigative jurisdictions. As far as we are concerned, we have investigative jurisdiction if it travels through the mail, and while this is sometimes a little difficult to prove, it is generally simple because we do have a wrapper, we have the postage, and we have the postmark, and so forth.

Mr. **Jeffords.** Let me get into the import-export situation. Do you have any judgment what percentage of the material that is intercepted as obscene is imported versus that domestically produced?

Mr. **Benson.** I am not sure. Maybe Mr. Similes can tell you what percentage comes from overeeas?

Mr. **Jeffords.** In rough general terms.

Mr. **Similes.** I think maybe our friends in the U.S. Customs Service may be able to answer that since they have primary jurisdiction over imported matter. We assume the judisdiction once the material enters the commerce of the United States and enters through the mail. However, we see foreign originated material by wrappers, by advertisements, and so forth, by film, the nature of films, but as Mr. Benson stated previously, we don't categorize it.

Mr. **Jeffords.** Is it a substantial part? We might have to consider amending the import laws.

Mr. **Similes.** I would suggest that in the 15 years I have investigated obscenity cases, I would say the majority of the child pornography I have seen in the mail was foreign originating. Not all of it was mailed from overseas, some of it originated here and got into the United States somehow.

Many years ago the source was primarily Canada. Of course, we have seen importations from Sweden, and importations from West Germany.

Mr. **Jeffords.** Now, the last question. Out on the west coast I suggested to them and I suggested earlier, maybe you heard the previous testimony, but in order to handle their problems of venue and age and all, it was rather enthusiastically received, as assistance to them that we require anyone that puts into interstate commerce anything that shows a child in any sexual activity, merely to certify, not for any screening purposes, but just to control the activity, a certificate setting out the place of the filming, the names and addresses of the participants, and the ages of the participants, of all those under the age of 18.

Then, you would make it a violation to put anything into interstate commerce or in the mails which had not been so certified and did not carry of copy of the certification of it.

I ask you as far as enforcement goes if you were to intercept something which did not have a certificate on it whether that would be easier to prosecute than it would be to prove the material was obscene?

Mr. **Benson.** Not necessarily under the postal obscenity laws would it be easier to prosecute.

Mr. Jeffords. I am talking about under statute which says you are prohibited from mailing something which has a child in sexual activities under the age of 18 without a certificate attached, and you find something which has a child in sexual activity without a certification attached, would it be easier to prove there was no certificate attached or would it be easier to prove it was obscene?

Mr. Benson. It would be easier to prove there was no certificate attached, presumably.

Mr. Jeffords. Then, of course, what we are trying to do, there are two ways we have to look at it. One, we want to help the local prosecutors, the people in the abuse of the child, and probably the most effective way we can do that is to prevent a market for the material, either legitimate or illegitimate, and if we talk in terms of black market, would it not be easier again to prove, if you find somebody transiting this in the black market, either to prove the crime of not having a certificate then the material would be obscene? Wouldn't that be easier?

Mr. Benson. I would think so.

Mr. Similes. I am not a lawyer and the Department of Justice adequately covered some of the areas, but I would suggest there might be a problem area if you are granting immunity to the person that does certify the film as you suggest and then mails something which would be constitutionally not protected, obscene material. I am not quite clear, are you suggesting that the only remedy would be the certification, not the obscenity feature? Are you asking him to indict himself by asking him to say I am mailing obscene material but certifying? Obviously the answer is it would be much easier from an investigative standpoint to identify the person for not registering or not filling out the form or filling out a false form but I am wondering if we wouldn't have the legal problem which I could not address.

Mr. Benson. In addition, if he filled out his form and correctly stated everything, now you have a sort of certified government mailing of obscene acts performed by children; but we are still back to the original thing that you must now charge him with these abusive children pictures.

Mr. Jeffords. The law as I envision it, you couldn't use this as any evidence either way on it and certainly it is not certifying other than the fact that you have named the participants and their locations, then it would be up to the local prosecutors using that information. What I would expect it would do is drive them, at least realistically, it would appear in California what has happened now they are leaning on them, the porno shops are saying we are not going to handle any kiddie stuff any longer because we can sell the adult stuff without fear of prosecution, and if they were had, if they were worried about being prosecuted for not having a certificate or there might be individuals under the age of 18 they would say we won't sell it and that would end your market.

Mr. Benson. We would have to probably agree that this is something that should be examined.

Mr. Jeffords. Thank you very much.

Mr. Conyers. Mr. Volkmer, Would you yield?

Mr. Volkmer. I yield to the chairman.

Mr. CONYERS. Gentleman, if our two subcommittees put together a staff that brought together all of the easily available porno material that was transported in the mail, could you evaluate for these subcommittees the status of the investigation and what activity was taken by the Post Office and ultimately the U.S. Attorney General's office in regard to each one?

Mr. SIMILES. We would certainly make every effort to, of course.

Mr. BENSON. I will make any member of my staff available to do whatever possible we can from our files to provide you information or to assist in showing the results of the various investigations at any time.

Mr. CONYERS. Very good, Mr. Volkmer.

Mr. VOLKMER. First, I would like to say I appreciate your coming here today and giving us your ideas and the factual matter and also your cooperation, but there is one part I would like to specifically discuss about your testimony, and that is the statement on page 6 that the greater part of this material appears to have originated in the foreign market or to have been reproduced domestically from imported matter.

Now, I would like to know what information or factual data that you have on which you base that. I am not disputing it, I would like to know more about it.

Mr. BENSON. I will let Mr. Similes handle that because it is a subjective thing to a certain extent and if we analyze it, we believe it is reasonably correct.

Mr. SIMILES. As I mentioned to Mr. Conyers, we do not keep separate statistics. We do see here at the national headquarters all obscenity cases that go for prosecution. We see certainly the majority of the individual complaints of advertisements and we base our conclusion on the years of experience we have had, Mr. Volkmer.

Mr. VOLKMER. Was that based on the material that you have obtained through seizure as to the type of material and where it originated?

Mr. SIMILES. Not totally. Seizure is part of it, but primarily it's based on advertisements we have received.

Mr. VOLKMER. In other words, advertisements that have been mailed that you know about or what?

Mr. SIMILES. No, advertisements that have been mailed from either outside the country or from within this country depicting the material showing the foreign language, the features of the people, a review of some of the photographs, again a repetition of the same material seen on different types of film.

Mr. VOLKMER. I see. We gather all that information and try to come up to a reasonable explanation. It is a judgment call but it is your judgment based on all of this that the majority or greater part, whatever, whether it is 55 percent or who knows.

Mr. SIMILES. That is as we see it.

Mr. VOLKMER. You are not denying that also a great amount of it, whether it is majority or minority, does originate in this country?

Mr. SIMILES. Certainly, absolutely.

Mr. VOLKMER. There is still a bit of it and some of it could be a duplication of that which originated in a foreign country.

Mr. SIMILES. Positively.

Mr. VOLKMER. And brought here and they duplicated it.

Mr. Benson. They don't honor copyrights or patents.

Mr. Volkmer. I understand that.

Mr. Conyers. Mr. Kildee.

Mr. Kildee. Thank you, Mr. Chairman.

If in enacting legislation, reading your testimony, you have the problem of proving interstate commerce, whereas your jurisdiction applies just to anything that is mailed, would you support then inclusion of some language in addition to interstate commerce or mailed through the U.S. mails that then would give you jurisdiction?

Mr. Benson. Absolutely.

Mr. Kildee. So you would support that type of additional language in this bill?

Mr. Benson. In fact, we would request it if you were going to have this type of legislation to separate the use of the mails sufficiently from the interstate transportation, because the mails do not have to be used interstate.

Mr. Kildee. There are wo handles we can get on this type of traffic. One is interstate commerce and the other is use of the U.S. mail.

Mr. Benson. That is right.

Mr. Kildee. I appreciate your bringing that to our attention.

Assuming we were to do that, if we in some way were to create a special classification of pornography involving child abuse, knowing the courts and prosecutors, do you think that it would be easier to secure a conviction in that type of pornography?

Mr. Benson. In child pornography?

Mr. Kildee. Yes.

Mr. Benson. Our experience tells us, yes, that that is reprehensible to almost anybody who considers himself normal, and the minute you get it in front of a judge or a jury they are going to find this prosecutable.

Mr. Kildee. So it is much easier to get that type of prosecution than say other types of pornography prosecutions?

Mr. Benson. I think so. Would you agree with me?

Mr. Similes. I would say so, particularly in view of the requirements espoused by the *Miller* Court on community standards. I would venture to say most forms of communities would find child pornography reprehensible and pornographic in the legal sense.

Mr. Kildee. You would be armed with greater tools if we were to include the mailing through the U.S. mails irregardless of interstate commerce, and you feel by getting a special category for child pornography that would assist you in getting prosecution in that area?

Mr. Similes. It should possibly assist in getting a better climate for prosecution for that particular matter.

Mr. Kildee. Thank you very much.

Mr. Benson. I might say what is permitted between consenting adults and what is acceptable to be sent through the mails to a person requesting it is somewhat different when it involves a child. I think this is the area that most of us object to the most.

Mr. Kildee. This is the extra obnoxious nature of child pornography, is that right?

Mr. Benson. That is right.

Mr. Conyers. Mr. Gudger.

Mr Gudger. I have only two limited questions.

I take it that your conclusion that a great portion of this pornography, particularly the child pornography, is coming in from a foreign manufacturer, or foreign market, derives from your own experience in the use of the mails from foreign locations?

Mr. Benson. That is correct.

Mr. Gudger. Now, you have made no studies beyond what has actually been observed or handled by your postal investigation service in those instances of using the mails for this import function. Have you made any research independent of your mail use?

Mr. Benson. No.

Mr. Similes. Strictly in the course of our normal investigative function.

Mr. Gudger. And you say we could effectively perhaps block this mail importation by giving you authority to deal with that problem by specific congressional enactment?

Mr. Benson. I am not quite sure I understand what you mean, Congressman.

Mr. Gudger. The law that you are using now for your prosecutions is triggered by a complaint by the addressee, isn't that correct?

Mr. Similes. Not in all instances.

Mr. Gudger. In what proportion of the instances have you actually indulged in or instituted prosecution where you did not have a complaining addressee?

Mr. Similes. I couldn't give you a quantifiable figure at this point and I am not sure whether I could even develop one for you. But I would say it is a 50–50 situation, Congressman.

Mr. Gudger. So when you see material that is obviously offensive, and obviously violates these statutes, regardless of whether or not an addressee has complained about receipt, you would still conduct your investigation and proceed?

Mr. Similes. We would conduct one on the basis of advertisements we have seen in a tabloid or in another periodical or magazine and, of course, we would conduct one on the basis of customer complaints.

Mr. Gudger. You are saying if we would give you authority to act in what would appear to be patently a child abuse-type situation or child obscenity or pornography-type situation, that you could act independently in that instance without an addressee?

Mr. Similes. We can act without the addressee.

Mr. Benson. We are an addressee. We make our own test purchases many times and usually we have to do that even if we have a complaint.

Mr. Gudger. This is what I wanted to establish.

Mr. Benson. Certainly.

Mr. Gudger. Now, clearly we can protect the use of the mails, the international mails, from the importation and using our postal authority to regulate, but we can also, I think, regulate any form of import in foreign commerce.

Would you have any guidelines or suggestions you could offer to us in trying to raise a bulwark that would not only provide you with the tools to deal with this import but would also allow all methods of importation to be regulated?

Mr. Benson. Well, it might be better if you made that inquiry of Customs because they have the responsibility for reviewing all imports into this country. When these importations are made through the mails, we make the mail available to the Customs agents at the point of entry. They, I think they will tell you, selectively review shipments through the mail and determine whether its permissible to come into this country.

Presumably, there could be all sorts of regulations in the Custom's procedures which would identify that mail, make it mandatory it was identified, and make it mandatory it was certified or had some sort of certification on it that the Customs could turn it back.

There is no doubt that they have the authority to control importations into this country. When it comes through the mail, we make it available to the Customs, we do not search it ourselves.

Mr. Gudger. Do you see any reason why we could not make subject to immediate confiscation, any materials of an obscene or offensive character that did not have certain declarations on the publications themselves indicating where they had been published, by whom they had been published and whether or not children had been used in the publication and that sort of thing.

Mr. Benson. I think the constitutional question would still come up. If you are talking about child abuse and child pictures, I think, of course, my recommendation is, to try anything to make an effort to stop it.

If you are talking about consenting adults, I believe we have a number of Supreme Court rulings which would lend themselves toward interpreting those proposed rules, but against children I know of no specific case law.

Mr. Gudger. Mr. Chairman, one final question.

I look upon our problem as a complex one and I don't see that this bill deals with the situation of foreign importation. That is why I am pursuing this at some length.

You say that this Congress clearly has authority to deal with foreign importation whether it comes by means of international mail, or whether it comes through Custom's regulation of our ports of call, and you say that we can deal with it without any substantial constitutional restrictions. Are you saying that?

Mr. Benson. Well, recognizing I am not an attorney, nor is Mr. Similes, we are investigators, I personally think that is correct and we have had a number of Supreme Court rulings.

We have had one just recently which permits Customs, again reestablishes Customs right to stop and search almost everything coming into this country, if it is necessary.

Mr. Gudger. You certainly see no reason why we could not impose a tremendous tax or import duty on any type of printed material coming to this country meeting certain criteria as distinguished from absolutely prohibiting such importation?

Mr. Benson. I know of no such prohibition.

Mr. Gudger. You see no reason why we couldn't do that?

Mr. Benson. I would recommend we do everything possible. This is an abhorrent and reprehensible trade, and I think anything that is done by the Congress to stop it is for the good.

Mr. Gudger. No further questions.

Mr. Conyers. The gentleman from California, Mr. Miller.

Before he begins his questioning could I ask him to assume the chair as ranking member of one of the two committees here. I have amendments pending on the State-Justice appropriation shortly.

[Mr. Miller assumed the chair.]

Mr. Miller. I have a couple of questions in light of what other people have asked, and that is, first of all, is it correct to say it is your testimony that you do not wait for complaints to undertake an investigation which may possibly lead to prosecution?

Mr. Benson. We do not necessarily wait; that is correct. We can do it either way.

Mr. Miller. How many cases did you initiate in the last fiscal year without a complaint; do you know?

Mr. Benson. No; I don't believe we have that information. We don't keep it in that kind of—we don't get our statistics down to that fine a point. We could possibly search it out for you.

Mr. Miller. You only had 30 indictments. What number of those out of 30——

Mr. Benson. We would have to go back and research those indictments.

Mr. Miller. Is it half?

Mr. Benson. I wouldn't be able to say.

Mr. Similes. I would say better than half based on customer complaint.

Mr. Miller. Better than half based on your own investigations?

Mr. Similes. On investigation based on complaint by a postal customer upon receipt of a piece of advertisement.

Mr. Miller. We can assume roughly 40 percent or something around there were brought?

Mr. Similes. Last year?

Mr. Miller. At your own initiative?

Mr. Similes. Yes.

Mr. Miller. Without a complaining party?

Mr. Similes. Approximately.

Mr. Benson. If you won't hold us to that statistic.

Mr. Miller. I am just trying to get some feeling.

You also don't need a complaining party. It seems to me a reading of 18 United States Code 1461 is that you are the complaining party, that they have violated the mails, not necessarily the person who receives it at their home or business or what have you but the post office.

Mr. Benson. The use of the mails is the violation whether a citizen complains or not.

Mr. Miller. One of the witnesses who will follow you, Mr. Wooden, has said in his testimony when he recently interviewed Postal Inspector Kurt Similes of the Washington, D.C. L'Enfant Plaza West office, about the progress of their campaign to clean up the mails, he stated that no new postal directives concerning child pornography have been passed on to employees and that they can only inspect and investigate when there is a complaint.

That in fact is not true.

Mr. Similes. I had a telephone conversation with Mr. Wooden; he said he was from "60 Minutes." He asked me what names could be on the postal list. We talked about 39 United States Code 3010. I don't conduct interviews by telephone and I said we do. I recall saying we do investigate customer complaints. He said, "Will you investigate customer's complaints?" He asked "Are you issuing any instructions?" or words to that effect, are you issuing any new instructions with regard to the investigation of child abuse pornography and I said, "No, we are not issuing any new instructions," inasmuch as it is standard operational procedure with us that when inspectors come across information, complaints, and advertisements dealing with child pornography, we would investigate them.

It is nothing new, we have successfully investigated cases of child pornography. In the last few years we have had two or three very significant cases involving child abuse in the Texas area. We had a very serious situation there and got some excellent prosecutions. So it is not really new that we have to issue new instructions. That was the context of my conversation.

Mr. MILLER. The purpose of my question isn't to impeach anybody's testimony but to find out what your MO is.

It would seem to me in this case, at least, from the evidence that we have received in other hearings, that to deal with much of the material that moves across the country, using children, and where children in our belief have been exploited or abused, does not necessarily or even is directed at unwanted customers, it is directed at people who wish to receive it, the market is there, they either come into a store and purchase it for $5 or they purchase it through the mails because they want it.

So the next question would be you mentioned that in fact you have been the purchaser, in some cases for the purpose of investigating. To what extent do you use an undercover agent or open the mails to make this kind of determination because these people aren't going to complain, they want the material?

Mr. BENSON. Let me cover the opening of the mails because that is a problem.

Mr. MILLER. I would assume if this was offensive to Richard Nixon you would open everybody's mail, but that is no longer true.

Mr. BENSON. We have no authority to open any mail except by court order or in the dead letter office when it is undeliverable.

We have the same authority that any other citizen has. The mail, the seal of mail, has the highest integrity. We must obtain that mail through a complaint or through our own purchases. We can open our own mail. We don't open anybody else's mail.

Mr. MILLER. Do you actively go out and seek to purchase this material for the purposes of prosecution or investigation?

Mr. SIMILES. Yes, we do, and to answer the second part of your question, how do we come about knowing that an individual is distributing this mail without receiving a customer complaint. There is one way that we identify him without these complaints, and this is through advertisements distributed by the purveyor of this material to our test names. When we establish a test name, an undercover name under which we make purchases, to establish the necessary evidence that a mailing has occurred, it immediately goes on a mailing list and we receive advertisments to those test names from firms we have never previously encountered.

One of those instances led to the indictment, I spoke about earlier, yesterday in San Francisco.

Mr. Miller. Does that lead you to believe there is an exchange of mailing lists between the sellers and production people of this material? You sign up for one magazine and all of a sudden that post office box is inundated with other materials so there must be a selling of lists.

Mr. Benson. Certainly.

Mr. Miller. And transferring of names.

Mr. Similes. It is done through brokers.

Mr. Miller. Also, the question that you believe that there are probably 25 major organizations currently.

Mr. Similes. Approximately.

Mr. Miller. And on the questions of child pornography you said approximately maybe 13.

Mr. Similes. We have currently under investigation.

Mr. Miller. Currently under investigation. There may be more. Can this committee draw from that inference that perhaps those 13, while that seems like a small number, may be engaged in rather diverse and duplicative measures, that where they publish one magazine they may publish five magazines under different names, and so forth. So to say that 13 is not to deal with only 13 products?

Mr. Similes. No.

Mr. Miller. You may deal with the whole range of products and different mailing groups and different clientele?

Mr. Similes. You are right, not only product but different magazines by the same firm. Reiterating on the case indicted yesterday, there were two different firms involved by the same operator, they used different firms but the same operation. So you are quite right, it could be multiplicity in operation. There could be.

Another thing, I would like to finish to give you the full benefit on this point. A number of pornography distributors, commercial pornography distributors, do not zero in strictly on child pornography, they try to cater similarly to the book store, to the entire trade. Consequently, some advertisements feature the gamut of fetishes ranging from what have you to what have you, including child pornography. I would just like to add there is not a selective merchandising effort in some cases.

Mr. Miller. One final question. It seems to me I think perhaps Mr. Conyers is correct, that we who express such outrage at this practice in an official sense might direct our staffs to procure the various complaints the witnesses have made available to this committee. We had the lady from New York who brought a bunch of material in to Mr. Conyers and started reading it and naming of names. She did it again in New York. I think we ought to make an effort to procure that material and make it available for you for the purposes of investigation because I think it also may show us the entire links between these various organizations and also again, Mr. Wooden, who will follow you, lists 10 people that he is making a complaint against.

I think we also ought to procure that list and those materials and make them available to you for an immediate investigation and analysis, because I think it would be very helpful in defining the types of problems.

I think Mr. Gudger is absolutely correct when he says we have a very complex problem, we should form a select committee. We are dealing with postal laws and custom's laws and child abuse laws and I don't think that is the best way. I think perhaps we can use you for a temporary focal point in giving us the kind of analysis and investigation of the size of the market that may be necessary to help us deal with that situation. I think the staff should try to make that information available to you. I want to thank you for your testimony.

Mr. Ertel.

Mr. **Ertel**. Thank you. I have just a few questions.

You have 13 firms under investigation at the present time for dealing in child pornography. Can you tell me approximately how many children are involved in those 13 complaints?

Mr. **Benson**. No.

Mr. **Similes**. No; I couldn't.

Mr. **Ertel**. Have you made any attempt to try and determine how many children were depicted?

Mr. **Similes**. No; the approximately 13 cases under active investigations are out in our field units and we have not attempted to identify or from this standpoint, counted the different children that would be shown.

Mr. **Benson**. If I might say, we do not have to identify the subjects in the picture to show it is obscene and it is almost impossible to do so, you don't know where they are.

Mr. **Ertel**. I don't care what their names are. What I was trying to determine is how many children were involved in the active cases you had under investigation to give us some idea of the scope of what we are talking about.

You have indicated to us a lot of this material is of foreign origin so, therefore, we are obviously not in position to be protecting foreign children with U.S. laws. We can only prevent the transportation of material which is a result of that particular abuse. I was trying to determine how many U.S. citizens or U.S. children would have been involved in the things you were talking about.

The other thing, you have no authority to open in fact mail, and if I am in the business of producing pornography and transporting it to a retail outlet, I can ship that through the mail and there would be very little likelihood you would be able to either discern that is being done or to investigate or prosecute; is that correct?

Mr. **Benson**. We certainly could not do it by opening it because we will not open it. However, we do answer ads.

Mr. **Ertel**. I am talking about if I run an adult book store and I am the person, I also have an outlet which makes this material, I am delivering it through the mails to my adult book store, which is a retail operation, you and the mail service have very little opportunity to discern that is happening and to prosecute, is that correct?

Mr. **Benson**. That is correct, and if it is going between consenting adults, if it isn't child pornography, even if it is——

Mr. **Ertel**. So basically the only way you can in fact find out if the mails are being used for this is through advertisements or through the test name situation?

Mr. **Benson**. And through complaints.

The book store, of course, isn't going to complain.

Mr. Ertel. The advertisement would be a complaint, so you have two methods only. Do you have any idea how much of this stuff moves in relationship to what moves through the mail in interstate commerce through other means? We have other delivery steps other than the U.S. mails, a tremendous number of them.

Mr. Benson. That is right.

Mr. Ertel. Has there been any kind of relationship, do you have any kind of relationship?

Mr. Benson. No information on that at all.

Mr. Ertel. All right, thank you very much, I appreciate your comment.

Mr. Miller. Mr. Railsback.

Mr. Railsback. Thank you, Mr. Chairman.

How do you make a determination as to who may constitute a major dealer? Is that done by guidelines from the Justice Department. If so, what is that criterion?

Mr. Benson. Let Mr. Similes respond on that.

Mr. Similes. No criteria is set by the Justice Department. We determine it by investigation. We generally identify basically who the operator is, who the distributor is. Frequently we find that it is some individual who has a nine to five job and buys three or four rolls of film and sells them from his house We couldn't consider that a major dealer.

If you find a printing plant, distribution plant, or a business, then we will look deeper. We try to get subpoenas for records, avail ourselves of the grand jury system and try to identify the size and scope of the operator, after we have seen the material and we see the material is basically prosecutable material.

Mr. Benson There are some postal records, also mailing records. If they mail under a permit, where we can determine how many pieces of mail this person or firm has entered into the mail stream, or even if they mail first class and use a postage meter of some sort, we can see how many times we have set the meter and for how many dollars and determine the approximate number of mailings.

Mr. Railsback. In other words, it is really done on a case-by-case basis, and, really, right now there are no guidelines to really help you make a determination, you do it yourselves based on what you believe to be a major dealer-type transaction? Does the Justice Department also go along with you or does it say this isn't significant enough to constitute a major case, or what has been your experience in that regard?

Mr. Benson. Well, I think it is varied and I don't——

Mr. Railsback. Could I interrupt to say that the trouble that I have with this occurs when you give us your listing of cases that are pending or where there have been convictions or cases turned over it is not a very sizeable number and I think a lot of us are probably inclined to believe it is much more pervasive than that.

Mr. Benson. I think we don't necessarily seek more explicit guidelines from the Justice Department to define what a major dealer is because, for example, we would want to be able to step into and proceed full tilt if a major dealer decided to fragment his operation to make it appear as if it were a series of "Mom and Pop" operations, but in actuality it was one dealer operating from several locations.

Mr. Railsback. That bothers me.

Mr. Benson. That is covered within our own procedures. We proceed as if that is a major dealer.

Mr. Railsback. How many cases has Justice refused to prosecute which you have turned over to it?

Mr. Benson. I don't know if we have that statistic.

Mr. Similes. Through what time period would you be interested.

Mr. Railsback. Let us say the same time period where you gave us the record of indictments, convictions.

Mr. Similes. We wouldn't have that for that same time period.

Mr. Railsback. How about the last couple of years?

Mr. Similes. For this fiscal year we might have it.

Mr. Railsback. Just one final question. I gather that in response to an earlier question. Mr. Benson, you would favor doing something to make the laws a little bit tougher on importation from outside the country, is that correct?

Mr. Benson. Yes, sir, I would.

Mr. Railsback. I think a tax was mentioned. It wouldn't necessarily have to be a tax, would it? It could be even more prohibitory than that?

Mr. Benson. It could be a combination of things. I would yield to somebody with some expertise in this area, the Customs or Congress, because it is not an area in which I have a great deal of expertise.

Mr. Miller. Just two comments. You do not necessarily have to respond.

First of all, I would be very concerned that we don't use this issue of somehow these materials are created in foreign countries and they are imported to push the problem somewhere else. I think that there doesn't seem to be any doubt that there is a significant amount of materials that is clearly within your jurisdiction.

Mr. Benson. We believe so.

Mr. Miller. And the use of the mails, I think, under very clear statute in terms of abuse of the use of those mails, and, second, I will go back to Mr. Wooden's statement, what was your response there has been no new directive? I think you would do well to acknowledge what you see taking place in the Congress in terms of concern over this matter, and certainly it would be the concern over which either lack of enforcement or the failure to beef up enforcement in this area, would be what you might consider an enhancement of the problem by the Federal Government.

I think that the Congress is, as I view this issue, in response to my colleagues, very, very much concerned about this. You may very well want to X-ray these hearings and your participation in them to again look at your focus on the area of child pornography because what we are really talking about is not simply that material but the abuse of that child and the creation of that material. I think it so outraged the Members of the Congress. That is not to say that your job is an easy one, you can run off and focus on child pornography and let the rest of the pornography and obscene material go. I think there is a clear expression of that kind of concern by these two committees and certainly by other committees that have possible jurisdiction here.

And I think you will find it across-the-board and I think you would do well to heed that concern.

Thank you very much for your participation. I think you have been very helpful to us in the definition of the problem.

Our next witness will be Congresswoman Barbara Mikulski, from Baltimore, for the purpose of testifying before the committee. Welcome to the committee.

TESTIMONY OF HON. BARBARA A. MIKULSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Ms. MIKULSKI. Thank you, Mr. Miller, and members of the joint committee. My name is Barbara A. Mikulski. I am a Member of Congress representing the Third Congressional District of Maryland. I am also a professionally trained social worker with a master's degree in social work from the University of Maryland. I have spent an extensive part of my professional career as a child welfare worker in the areas of foster care, child neglect, and child abuse, so I come before you today not only as a congressional colleague but as someone who has worked extensively in the field that you currently have under inquiry.

I want to commend you for having these hearings. Ever since "Sixty Minutes" did a program on "kidporn" my constituents have voiced a continuing outcry of rage about this particular subject. The issues raised are not necessarily related to obscenity but to child exploitation and child abuse. What people are talking about when they say, "Can't you do something about that, Barb," is that they feel a child, without free consent of his or her will or being able to consent of his or her will, is being abused.

I would also like to point out I think the media attention and your congressional activity has resulted in a substantial reduction of "kidporn" being available in the market. I would like to give a concrete example. Prior to your hearings, I have evidence to believe that "kidporn" was widely available in an area of Baltimore City called The Block. Now I know, of course, Members of Congress would not be familiar with "The Block," but it is a particular geographic area of Baltimore given over to burlesque theaters, girlie shows, and other things related to what in Boston would be called the combat zone.

In preparation for this hearing I sent two of my male staff members up to "The Block" to see what they could buy or observe being sold in the area of "kidporn," over the counter and under the counter.

By the way, that was not a chauvinistic act on my part. I knew if I went they would recognize me and wouldn't sell it to me.

My staff members went to virtually every bookstore of this type on The Block. They could find no kiddie porn available either over the counter or under the counter, either because the guys weren't regular customers, or I think, your congressional jawboning and inquiry has taken it off the market.

I am a cosponsor of the Murphy-Kildee bill to amend the United States Code to prohibit the sexual exploitation of children and I also am extremely supportive of the proposed amendment to the Child Abuse Prevention and Treatment Act which extends the definition of child abuse to include sexual exploitation of a child by a person responsible for the welfare of the child.

I think those two pieces of legislation are absolutely critical to deal with the issue that we are talking about.

First, I think what the Kildee-Murphy bill accomplishes is that it makes it a criminal offense to promote this activity and thus discourages the porno procurers and parents who are actually pimping for their children from engaging in this kind of very lucrative enterprise.

Second, by making sexual exploitation of children a form of child abuse the question will be not whether the material is obscene but whether the child has been exploited, thus removing the first amendment issue.

I would also like to posture another way for you to view this problem, what we are talking about are child labor laws. And just as our predecessors maybe 50 or 75 years ago passed legislation to take little kids out of coal mines and little kids of sweat shops, now we need a child labor law to take little kids out of smut mills and, I think if we look at this as a violation of child labor laws it again takes the edge off the kind of constitutional issue.

However, as we pursue this course of investigation, it is my feeling and experience that says that this is really the first of many steps that we are going to have to take, colleagues, because really what this is indicative of in many ways is the whole issue that is coming into our conscience as a nation, and that is violence in the family. It is my experience that children who have engaged in kiddie porn also have engaged in child prostitution, which is growing in my own congressional district.

For example, we have a growing problem of teenage prostitution, both male and female. Why? Because most of the children who are engaged in this activity come from homes that are extremely violent, they are abused, either physically abused or sexually abused. They either try to get out or try to run away. When they run away they get into this type activity in order to support themselves financially.

Now, as we try to pass legislation I am sure that this will result in children being removed from one unsafe and unsavory home; this is going to take us into the whole issue of foster care. I would like to recommend to your attention that the children's defense fund released a report in April entitled "Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care". What the childen's defense fund said frankly when it comes to dealing with children, our public policies are fragmented, they are scattered through in a wide array of Federal bureaucracies, and instead of worrying about kids our own Federal agencies and, therefore, our own State and local agencies get into turf warfare.

What I am saying is that as we try to deal with this issue, I am not trying to stretch it too thin, first let us deal with the Murphy-Kildee, let us deal with child abuse, but then we have to take the next step to move into really taking a look at violence in the family, and in terms of physical abuse, battered spouses and then the whole issue of foster care, adoption care, and then a wide range of child welfare services.

This is probably the first few steps of a journey of a thousand miles. I am ready to go with you, and I commend you on conducting these very thorough hearings.

Thank you, I hope you find this information helpful in your work.

Mr. Miller. Thank you, Barbara, for your statement, a very forceful statement. I am happy to see that you took time to separate the issues into symptoms and problems, because I think that no matter how we deal with the issue of child pornography we are dealing with a symptom of something that is going on, a much deeper problem in the American family. One of the concerns that I have over all of the publicity around the issue of child pornography is that we will create even a worse image in the minds of those parents who might desire us to seek help of their own image not come forward and its great concern to me because we heard testimony from a program in California that deals with the problems of incest within the family where they are able to get parents or children to come forward, they have reconstructed 90 percent of the families they have dealt with, allowed those families to remain together and move on to useful lives, and the concern that we drive those people away because we create such a terrible image again, and you are one of the few witnesses that has gotten away, as we keep calling it, around the tip of the iceberg and gotten underneath to where we really are in terms of needs of services to families that simply cry out in help.

I think last year in California we had 53,000 families in crisis who were asking for help, affirmative steps saying help us, we want to be able to meet that need, and I think that some of what we see here, other than the sheer crisisness of people who would ever get involved in this business is also a symptom of what is wrong in the family.

Mr. Jeffords.

Mr. Jeffords. I want to commend you also on your statement, and for the same reasons Mr. Miller stated, for getting at and pointing out the more basic problems and we have got to deal with the real problems of sexual abuse especially where they occur in the family.

I wondered, I am thinking, I know Mr. Miller is thinking in terms of trying to direct some funds in this area to see if we can accomplish some things in the physical abuse of children, but we find very little has been done in the sexual abuse area.

California is the first State we found where anything had been done, like they have had Parents United, which is the same as Parents Anonymous, the only sexual abuse type thing. I wonder if we were to appropriate or ask for an appropriation of more money in the area what kind of programs you think it could best be spent on to deal with in the areas of the real basic problems of sex abuse which are becoming more expansive than we have in child pornography?

Ms. Mikulski. Well, Congressman Jeffords, I feel for one, we need to create a national climate for abusers to be able to come out of the closet, if you will, and face up to their problems, because you can't participate in a help program unless that occurs.

Second, when we talk about providing funds, I think one of the things we have to take a look at is to whom are we going to give money, and ultimately how is that money going to be spent at a local level.

One of my concerns, and that is why I wanted to point out this is such a difficult area, is that if we give it through traditional HEW pipelines, I am not convinced it is going to get down into the local community.

I am not sure public agencies can really be helpful in this.

Coming from my own social work background, I worked in the war on both public programs and voluntary social service sector, I believe that the best way to help parents with families with this type of problem goes into the voluntary sector, the fund should be available to a wide range of two types of organizations, No. 1, the United Fund type of organization, that has had a traditional, very thorough approach to family problems and, No. 2, to those funds to help self-help groups, in the same way we see with child abuse and whatever.

I think, for example, one of the things we need to think about might be a toll-free hotline. Somebody calls up almost in a model and says listen, I am scared, I do these things to my kids and I hate myself, and I don't know what the heck to do about it. Then somebody could provide crisis counselling over the phone and say, look, in Baltimore there is a Family in Children's Society. They have a special program; you are going to meet moms and dads like yourself. So when you think in terms of Federal funding, let us think about where it is going to go. I am a big believer that people who have the problem and are dealing with it can be of great help to other people who are beginning to struggle with the problem.

So that is why I am also saying as we think about funding let us think about the voluntary sector and let us think about innovative ways of going directly to self-help groups. I think they will start to spring up.

Another thing that I would caution is that many people would tell you we don't know very much about the problem, and that is true. We do need research. But one of the things that always happens whenever these issues come to the fore, members of the committee, is that everybody wants to study the victim and very few people want to get out and help the victim. I think in both cases both parents and children are victims in this. One of the things we need to do when we fund our program, is to make sure it doesn't become another continuing rip-off program, where they can study incestuous parents but the result is treatment recommendations and then help to local groups who I think have the will to help.

Mr. **Jeffords**. Thank you very much. I would like to point out we have done that very thing, reoriented the fund in the Child Abuse Act. I certainly agree with you if we do have additional funding for sexual abuse we ought to take that kind of approach.

Thank you very much.

Mr. **Miller**. Mr. Gudger.

Mr. **Gudger**. Congresswoman Mikulski, I want to thank you for your testimony, it has been most enlightening particularly to have someone here who speaks from our own point of concern and also has a background of social services experience.

I have had a rather substantial experience in trial practice. I have prosecuted cases dealing with incest and have dealt with hundreds of cases dealing with the problem of child placement, adoption, foster homes and I tend to see these things from a lawyers standpoint. However, in my part of the country we see very little of sexual abuse in our courts. We don't see a child as the victim of a sexual abuse situation but very, very rarely. And incest cases develop rarely into the area where the courts can deal with it. Maybe you are having a different experience in a more urban area. I would like to know do you have actual case documentation, of extensive child abuse situations involving sexual assaults upon children in the Baltimore area or any other urban area where you have experience or knowledge, and particularly has your own social service experience brought you in touch with any of this type of child abuse that——

Ms. **Mikulski.** My own experience did bring me into this type of experience, but let me tell you the way it was handled, which goes to the heart of being an attorney, is that where there was actual physical abuse of the child. As you know from your child abuse activity, where you could see the kid has bruises on his or her arm or burns, all the obvious marks that have clearly provided evidence for prosecution, then that is where those cases were predominant. However, what happens if you are a victim of sexual abuse that only comes out very often after the child might be in foster care when she says my daddy did this or my mommy did this, or my stepdaddy did this, and so on. But, usually when I get into types of this activity, unless it was actually forceable rape, the evidentiary material is not obvious. The child, he or she, feels guilty about having engaged in this act so somehow or other they feel that they have been bad.

Now somebody says my daddy beat me, my mommy beat me, here is my broken arm. That is very different than describing a sexual encounter with the parent or stepparent, which is also an incredible problem. So the children don't feel free to express themselves. There is guilt, reluctance, shame, inhibition in that area. When we would go into court on a child neglect basis, specifically culpable neglect to be able to remove children, in Maryland we separated culpable neglect from nonculpable. In some instances there was neglect in the family out of circumstances that might have been related to poverty or another problem we really do not in many instances prove in a court of law because you got into my stepdaddy did this, and stepdaddy said no, and other than where the rape had occurred there was no——

Mr. **Gudger.** So you have a very limited amount of judicial experience up there in child abuse cases?

Ms. **Mikulski.** I have had experience in trying to take these things into court but I can tell you No. 1, the victim does not want to say I am the victim, and No. 2, it is very hard to prove because unless there is rape there——

Mr. **Gudger.** One final question, if we put a bill like this on the books aren't we going to encounter the same difficulty in enforcing it that we already are encountering in child abuse situations in enforcing our statutes prohibiting contributing to the delinquency of a minor, which is, I think, in many States a method whereby a parent is deprived of custody of a child and the child is placed in a foster home where there has been some abuse situation, either sexual or otherwise.

Ms. **Mikulski.** You know, I think that with the law, the opposite will occur because somehow or another where wives and children are concerned there is still the attitude that that is personal property, that this kid is my property and I can do anything I want with this kid. There is an attitude that somehow or other in the home anything goes, because it is in my own home. I think that when we begin to change the sexual child abuse law, the child abuse laws in terms of physical and sexual abuse, what you are really saying is anything really doesn't go and because it goes on in your own home that doesn't make it right and that that kid is not a frisbee to be thrown up against the wall.

But I think only experience will tell us whether we are doing good or putting it deeper in the closet. I am saying let us try it, if it doesn't work then we certainly haven't made the situation worse.

Mr. Gudger. Thank you, Mr. Chairman.

Mr. Miller. Mr. Kildee.

Mr. Kildee. Thank you, Mr. Chairman. Congresswoman Mikulski, I appreciate your support not only today but your support in the last months on this bill. You made a statement which I will concur with, there has been substantial reduction of child porn since the 60 Minute show and the introduction of this bill, and that is true. While out in Los Angeles we went to some of the porn shops with the LAPD and they would ask, LAPD would ask do you have any porn, kidporn? No; we are not going to handle that stuff, there is a new law making me an accessory to child abuse. The fact we introduced a bill has had a chilling effect upon that.

I think if it were really on the law books it would certainly deter that one area of pornography which results from child abuse, and that is really what we are trying to get at.

I think there are two reasons to produce child pornography. One is a sexual persuasion toward children, and that requires treatment, but the other is profit, human greed, two human weaknesses there. If we can take out or diminish somewhat the profit, we are going to somewhat control some of that, one of the reasons for child pornography. But I think you are really right, the first part of 6933 which I attempted to amend has another chapter incorporating the language of this bill.

The bill introduced by Mr. Brademas really addresses itself to the child abuse prevention and treatment and I think we have to do that. The problem is the Congress. The Congress is good to authorizing great problems and then not funding them. Next year, for example, we will authorize under Mr. Brademas' bill $25 million, which may be used for private agencies and will really give some help, but last year I think we authorized a similar sum and the Congress appropriated much less than that. I think that is the problem I think we have.

If we really think our kids are important in this country we have to spend some money to protect them.

I voted several weeks ago to take about $2 billion away from the Pentagon budget and I can find a good place to spend that money to protect our children. I think that is very important.

But I think the whole problem of alienation in our society is something we have to really know more about, see how we can handle that, and violence in the family.

Some of the children that we came across in Los Angeles who were runaways, really had very little option except to run away, the family life was so bad that this was really a way to escape something that was unbearable.

So I would hope that the Congress in addition to passing laws like this would fund our authorization bills to assist the family and assist those families where violence does exist, and not only sexual violence but all types of violence which leads to children being alienated from their family and running away, and I would hope that, I know you will be a leader in that, and I just hope when the Congress gets down to appropriating money for 6933 that its appropriation will be in line with the authorization.

Mr. **Miller**. Mr. Ertel.

Mr. **Ertel**. Thank you, Mr. Chairman.

Congresswoman Mikulski, I enjoyed your statement. I have a couple of questions I would like to ask you.

No. 1, you have had experience obviously with the laws of the State of Maryland in relation to child abuse which you basically were talking about. Are those laws adequate in the State of Maryland to take care of the problems within the State of Maryland in relation to child abuse in this type of problem in your judgment? Do you have a contributing to deliquency, corrupting the morals of a minor?

Ms. **Mikulski**. Yes, sir, we have a wide range of categories within State law, both relate to neglect. In some instances we don't go directly to the child abuse but we go to something called children in need of supervision where a petition may be filed in juvenile court in behalf of a concerned party saying this child needs supervision. It might be that that child needs supervision outside of his or her home. That could be, for example, filed by a school authority for a problem of chronic truancy by a public health nurse who sees these things, or a variety of other things.

Mr. **Ertel**. Neglect, that come within it if a child is being neglected either physically——

Ms. **Mikulski**. In Maryland, there were really as I remember two types of negligence. One is culpable and the other is nonculpable negligence. Nonculpable negligence would come under the category of the children in need of supervision. That might be where a kid is absent from school but mommie is in the hospital and dad is a car washer and there is no homemaker service and the whole family is in disarray. What they really need is some kind of structure to help them straighten out their family and the child doesn't have to be removed because there is good will on the part of the parent toward its own child.

Culpable neglect is where there has been actual abuse of the child and willfull exploitation of the child.

Mr. **Ertel**. I guess that brings me to my next question then, your statement here. Do you feel that the Federal Government should enact legislation which would either usurp or supplant that State legislation or is it better that that be handled at the State level where it is more of a personal, closer relationship than what I tend to think of the Federal Government, being very impersonal, very standoffish? Aren't we better trying to deal with this more on a local level?

Ms. **Mikulski**. Well, I think the problems need to be solved on the local level and it will be worked out in local courts, it will not necessarily end up in Federal court. However, when you get to the issue of kiddie porn——

Mr. **Ertel**. The transportation. I think. I was just directing myself to the child abuse end of it without getting into pornography and transportation.

Ms. **Mikulski**. I would have to carefully consider a preemption clause, Congressman Ertel, but one of the problems is that I am not familiar with all of the State codes, nor their adequacy, nor their sense of urgency on this issue.

Mr. **Ertel**. Well, I guess that brings me to my final question. You talked about funding a voluntary agency like United Fund. And if in fact we get the Federal Government giving money there, then if we are going to go along with the Federal Government giving money, we are going to go along with restrictions by the Federal Government, and we are going to have Federal control. I have some question whether or not the Federal Government wants to get into funding United Fund. They are a charitable organization. In my judgment, at least generally from what I have seen they have done an excellent job.

In my area we have a hotline funded by a charitable organization. I am sure we don't want the Federal Government in there.

Ms. **Mikulski**. They are already in it. For example, there is Federal support for programs like meals on wheels, family in children society.

Mr. **Ertel**. But it is not directly to the United Fund as an agency?

Ms. **Mikulski**. I am talking about agencies within the United Fund. First of all, they tend to have a legitimate record of service in the community. I am really talking about the local family children society, I am talking about a consortium of services, perhaps Catholic charities, Jewish charities, Lutheran social services, who sometimes form a consortium.

Mr. **Miller**. They are agencies that get money?

Mr. **Ertel**. Yes.

Ms. **Mikulski**. They do receive Federal funds.

Mr. **Ertel**. I hope we are looking at United Fund and those things as voluntary.

Ms. **Mikulski**. I am not talking about——

Mr. **Ertel**. That function without getting the Government in there telling them how to run it.

Ms. **Mikulski**. I am also saying that I don't think that Federal funds should ever be the total support of local charitable and volunteer organizations. That is what provides the vitality and commitment to do a good job.

Mr. **Ertel**. I think once we get down to the basics I think we are much more in agreement. I was worried about the broader sweep.

Mr. **Miller**. Mr. Railsback.

Mr. **Railsback**. Yes, I, too, would like to commend and thank you for what I think has been very helpful. May I ask you, based on your experience, do you know of any instances where somebody acting as a legal guardian or a foster parent has abused or exploited a child?

Ms. **Mikulski**. Yes sir, it is with a great deal of pain that I have to say that in my experience as a child welfare worker this has occurred with a stepfather, primarily, and not so much the stepmother, and then in foster care situations.

Mr. **Ertel**. What, if anything, do you think we can do about that? Would that more properly be left to the local people?

Ms. **Mikulski**. I think that is done by the local people through more screening of applicants for foster care.

Mr. **Ertel**. I think that is all I have.

Thank you, Mr. Chairman.

Mr. **Miller**. Thank you, Congresswoman Mikulski.

Our next witness is Mr. Ken Wooden, who is an author and also an investigative reporter for CBS "60 Minutes."

Mr. Wooden, sometime ago a book, "Weeping in the Playtime of Others" which was a rather dramatic exposé unfortunately rather accurate, of the problems of institutionalization of children in this country, and it is sort of with special thanks that I welcome him here today. It was almost 2½ years ago that Mr. Wooden and I and a lot of other people sat in this room, and there were only 12 or 13 of us, talked about what we could do about institutionalization of children, and also I think it is related to this hearing because in terms of the runaways much of the problems we have we don't have alternatives for these children and I would like to tell Mr. Wooden just on my own behalf 2½ years later on Monday or Tuesday of next week this House will vote on H.R. 7200, which will dramatically change the foster care system in this country and hopefully never again will the accounts that took place in your book happen, and if we are going to move a child out of his home or out of a relative's home there is going to be a showing that it is to the benefit of the child and not to the convenience of the State, as you so clearly depicted in the issue of banishment and overinstitutionalization of children. I welcome you and look forward to your testimony.

TESTIMONY OF KENNETH WOODEN, DIRECTOR, NATIONAL COALITION OF CHILDREN'S JUSTICE, WASHINGTON, D.C.

Mr. WOODEN. I thank you and I commend you, Congressman Miller, for hanging in there during that long period of time.

I thank the committee for letting me come here and express my views.

Before I forget, I do want to comment about foreign mail and foreign pornography coming into this country. I would like to caution the Congress from making foreign interests the culprit in all kiddie porn in America. We found when I was working with CBS on the "60 Minutes" program that there are mail forwarding services in this country and out of the country. We ordered some material. I think it was from Denmark and the postmark on the material we received was Washington, D.C. Now, I think it would behoove the committee and some of your investigators to go and see how many of the addresses in Copenhagen and London are truly porno operations or simply mail forwarding services to this country, because we did find one.

In October of 1976, with the support of the National Coalition for Children's Justice and following the arrest of Rev. Bud Vermilye for running a porn operation from his Boys' Farm in Monteagle, Tenn., I began an extensive investigation of children's sex and pornography throughout the United States. Reverend Vermilye contacted me as a result of my appearance on the Today show and my book, Weeping in the Playtime of Others. He requested assistance from me in obtaining a boy from the State of Tennessee. His publicity, which I now make available to this committee, proved to be extremely interesting after his sexual exploitation of children came to light.

My investigation lasted 9 months—actually, it still continues—thanks to the cooperation and trust of police departments, social workers, district attorneys and the children we all profess to protect. In January of this year, I collaborated with CBS "Sixty Minutes" on the program, Kiddie Porn, which was aired May 15. That program was the visual results of an investigation which took me into the following States: California, Washington, Colorado, Texas, Nebraska, Kansas, Louisiana, Iowa, Illinois, Tennessee, Michigan, Virginia, Georgia, Florida, New Jersey, Pennsylvania, New York, Rhode Island, and Massachusetts.

Child sex and pornography is an interrelated, massive industry, a deeply rooted phenomenon in our society that has insidious ramifications for every child and concerned parent. We now know it is not simply a multimillion dollar film-picture industry with distribution and related activities centered in large cities and their adult book stores. Instead, the largest bulk of kiddie porn is "brown bag" matterial (homemade) (see exhibit A and B)—inexpensive 8 millimeter film, sound cassettes and 35 millimeter home processed photos, along with magazines and ad letters.

We also find men (mainly)—chicken hawks—preying on the young (chickens) in small towns in Maine, Oklahoma, Colorado, Texas, Florida, et cetera, and in organizations once thought safe by parents—Boy Scouts, private schools, summer camps, church groups, children homes, et cetera. No child is safe from these adults who reap sexual as well as financial gratification from their victims. The material produced from their exploitation, like a stick in a stream, is swept into the interlocking streams of post office boxes and finds its way to the delta of national distribution.

I am convinced that the use of adult book stores as outlets for child pornography is but the tip of the distribution iceberg: The vast bulk is carried through the mails. I have read scores of letters exchanged by adults across this country which document my premise. The following are portions of three letters, the first from a convicted Boy Scout leader in New Orleans:

> * * * Very good on Nelson's comment on young girls * * * sure would enjoy a home-made movie along those lines. Does he have any slides or pictures of an (undecipherable)? Sure would enjoy seeing some. * * * I have decided to loan you and Dave and Church movies * * * please return within a week * * * and I hope sincerely it will inspire you to make a movie there to share with me.

A second letter:

> Honey I am glad that you like the dark room equipment I sent to boys farm. I knew they could make good use of it.

A third letter-ad:

> Special attention * * * Couple, experienced movie and still photographers, would like to hear from families and especially children for discreet documentary film and for still shots * * * we love children.

I would like to comment here on the role of the Federal Bureau of Investigation. On May 8, the Chicago Sun-Times carried an article stating that the FBI "is attacking Kiddie Porn" and that "the flow of child porn (there) has slowed to a trickle * * *." Mr. Chairman, that simply is not so and never has been the case. During the crucial period of piecing together the national child porn scandal, the FBI stood far removed from local police departments and their own integrity, as city and county law enforcement officers tried to cope with a national investigation without national resources. Many police departments could make only collect long distance phone calls. Los Angeles' Children's Sex Abuse Unit, a special division headed by Sgt. L. Martin, told me they lacked the proper equipment and cars to fight the rising epidemic of child porn in that city. FBI agents walked out of a meeting in Boston between Massachusetts and Louisiana police and never returned. Without exception, every police department or district attorney I worked with voiced combined frustration and bitterness when the FBI's responsibility was discussed.

During this past winter, as the story was being put together like a massive picture puzzle, the chief spokesman for the FBI in Washington, D.C., Mr. Thomas Coll, told Christian Science Monitor reporter, Robert Press, that they lacked the jurisdiction to intervene in child pornography unless it occurs on an Indian Reservation, which only then makes it a Federal offense. Since sexual abuse of children isn't a Federal offense, the FBI maintains no separate statistics on its frequency and according to Mr. Coll, he "(doesn't) think such data would be available anywhere."

Because the Federal Bureau of Investigation lacked the interest and/or will to help local law enforcement agencies on this issue, the National Coalition for Children's Justice acted as a national resource investigation center for both police and district attorneys. I respectfully submit to the Congress, however, that the modest budget of the NCCJ can no longer carry the FBI because they are heavy—heavy in the knowledge that they lacked the foresight to combat a hideous crime against children. Because of their irresponsibility, untold numbers of children are currently enduring sexual exploitation that all decent peoples abhor.

Child porn has not slowed to a trickle. As recently as 2 weeks ago, the outlet I have been monitoring through the mails was very much like a mountain stream after winter snows have melted—a flood of filth, overflowing the banks of post office boxes, credit companies, and bank accounts. There is nothing you can't obtain via the mail with your Master Charge and/or Bank Americard (exhibit C)—from hard core kiddie porn (age 4 to 16) to actual sex with the child model of your choice. (Exhibit D and E). And all this goes unchecked by postal authorities with their effective laws that are not enforced and ineffective ones that are enforced.

Let me cite four examples:

One. I requested, by mail, child porn material from 40 different distributors. Three of my letters were opened and returned by the post office with the following reply:

> DEAR POSTAL CUSTOMER: The enclosed letter was undeliverable as addressed and contained no visible return address. This accounts for the delay in return and the 20 cents service charge. It is suggested that you place your complete address, including ZIP Code number in the upper lefthand corner on the front side of envelopes mailed in the future.
>
> "LIM P. LEE, *Postmaster.*"

Two. Rules for use of Post Office boxes state: "Post Office boxes or caller service may not be used for any purpose prohibited by postal regulations."

I believe enforcement of Postal Law Title 24, section 1461: "Mailing Obscene or Crime-Inciting Matter" (see exhibit F) could succeed in cleaning out the neglected work of postal authorities whose Post Office boxes provide a haven for photos and films of children who most certainly will be destroyed for life.

Three. A person receiving porn mail can fill out postal form 2201 (exhibit G) which requests that they "not receive sexually oriented mail". All such names are compiled on a monthly master list which, in accordance with Postal Law Title 39, section 3010 (exhibit H) is sold by the Postal Service to smut distributors—if they wish to purchase and/or honor them! I leave the logic and effectiveness of such a statute with you to ponder.

Four. When I recently interviewed Postal Inspector Kurt Similes of the Washington, D.C. L'Enfant Plaza West Office about the progress of their campaign to clean up the mails, he stated that no new postal directives concerning child pornography has been passed on to employees and that they can only inspect and investigate when there is a complaint.

With that knowledge, therefore, Mr. Chairman, for the kids we are charged to protect and on behalf of the National Coalition for Children's Justice, I would like to make a formal public complaint against the following groups, companies and people who may be in violation of postal laws as defined by the Congress:

One. The Broad Street Journal (The Best & Most Popular Personal Ad Listing Service), P.O Box 337, Milliken, Colo. 80543 (exhibit I).

Two. Boy Studies, Timely Books & Overstock Book Co., 519 Acorn St., Deer Park, N.Y. 11729.

Three. T.B.C. (Teddy Bear Club), P.O. Box 91, Sinclair, Maine 94109 (exhibit J).

Four. Team, 1255 Post Office Street, Suite 625, San Francisco, Calif. 94109 (exhibit K).

Five. Hermes, P.O. Box 802, North Chicago, Ill. (exhibit L—tape cassette of a house parent seducing a boy in a boys' home. Instructions on how to infiltrate Boy Scouts, church groups, etc.)

Six. New World Sales, 7247 Eccles, Dallas, Tex. 73227.

Seven. CC, Box 85417, Hollywood, Calif. 90072.

Eight. Club-FW, 216 W. Jackson, #6121A6, Chicago, Ill. 60606.

Nine. Hollywood Color, Box 27932, Hollywood, Calif. 90027.

Ten. Mrs. Ingrid Johannsen, P.O. Box 924, Houston, Tex. 77001.

While most agree that child sex and pornography is basically a boy-man phenomenon, I still believe that the victims of the most outrageous and hardest core porn I have encountered are the young girls being raped day by day in city and county jails across the country. It is a fact too that Chicago girls in summer camps have been used in porno films and still pictures. And tragically, many social workers have simply given up on the frequency with which young daughters and foster care daughters are used as sexual playthings by poorly chosen foster parents or real fathers with serious incest problems. It is a problem that neither child nor parent can handle or cope with.

What can be done? I have been out of the country for the last week, so hope I will not go into what has already been discussed. However, I so want to stress four areas that have been lacking in testimony I have followed to date:

One. Children need protection. The U.S. Justice Department should organize within its agency a Child Protection Division as soon as possible, comprised of criminal and civil rights lawyers and newly trained FBI agents to investigate the criminal and civil exploitation of children. Adults who have traditionally abused children must know the long arm of justice will begin protecting our most vulnerable resource—American's youth.

Two. No organization, and that includes churches and their affiliates, should be free from filing financial records and reports (IRS form 990) for the public record. Without this basic information, kids are at the financial and sexual mercy of their keepers. Those who are honest do not resent the light of public sunshine laws.

Three. Fingerprinting and fingerprint checks should be made manditory Federal laws. The Privacy Act should be amended to exclude the criminal sexual crimes against children by adults seeking employment that involves the young. A personal note: Before I started college in 1958, I classified fingerprints for the New Jersey State Police. Once a week I checked prints of adults seeking work as school bus drivers. I always "caught" six to eight people with long criminal records of sexually molesting children. That method of screening in New Jersey was certainly a safeguard. Now, however, because of the Privacy Laws, a Boston school bus driver's record, dating back to 1950 (a total of 11 years in jails, institutions and hospitals for sexual crimes) was not screened until he had added another 12-year-old boy and 13-year-old girl, both retarded, to his growing list of rapes.

Four. Most important of all, many of the kids which we interviewed for "Sixty Minutes" were either recently released from institutions or had run away from home and themselves. With an average 3d grade reading level, rejected for employment by a labor market whose unskilled jobs have diminished from 17 percent in 1960 to 5 percent in 1975, and void of dreams of a future, they become prey for child porno businessmen or sex offenders, because this country has never been willing to cross the last frontier of human rights and opportunity for its children.

Do not, Mr. Chairman, pass a porn law and forget about the basic needs of America's kids today. If you do, I fear this country, like the community of Waukesha, Wis., will be forced to repeat the child sex scandal of 1977 with still another ten years hence. If however, this Congress and new administration will make children a true priority, the lines of D. H. Lawrence will have renewed meaning for them:

> "Not I, not I, but the wind that blows through me
> A fine wind is blowing a new direction of time.
> If only I let it bear me, carry me; if only it carry me!
> If only I am sensitive, subtle, oh, delicate, a winged gift.
> If only, most lovely of all, I yield myself and am borrowed
> By the fine, fine wind that takes its course
> through the chaos of the world * * *."

One very, very last point, Mr. Chairman. After this testimony I am going to be looking at the very interesting congressional hearings in the 1950s, congressional hearings on the very subject, congressional hearings that discussed a ring of porno operations and a ring of sex abuse around the United States. It is going to make very interesting reading because I am afraid we are recycling a scandal and until we really get tough and until we go after those exploiting children and until the Congress makes children the priority, I am positive we will have another hearing on this 10 or 20 years hence.

Mr. **Miller**. Thank you.

Mr. **Kildee** [now presiding]. Thank you very much.

You indicated that you wanted to formally request to file a formal complaint against certain groups with the U.S. Postal Service. Have you done that directly?

Mr. **Wooden**. Well, in writing, after today's hearings, positively to the postmaster.

Mr. **Kildee**. You have done that?

Mr. **Wooden**. We will have after the hearing today.

Mr. **Kildee**. Very good.

Mr. Ertel.

Mr. **Ertel**. Thank you Mr. Kildee.

I was interested in your comment that most or a great percentage of this is brown bag porn. How in fact do you suggest that the Congress attack that?

Mr. **Wooden**. I think under child abuse.

Mr. **Ertel**. But we have to have jurisdictional hook. That is within the State prerogatives as long as they stay within the State lines. Do you have a suggestion as to how we approach that, possibly asking Justice to draft a uniform statute which could be enacted within each of the States?

Mr. **Wooden**. I am not a lawyer, Mr. Congressman, but I do think if you tighten up legislation dealing with child abuse and make it a very serious offense to photograph a child and then sell the photograph, like the good minister was doing in Tennessee, it would help to curb that. Two, I really think that the Post Office should clean up their act.

I have a brother who worked with the post office. I used to work for the post office at Christmas time. They know what comes back on return to sender mail. They know the material that is coming back and they can clean up their P.O. boxes. I think to really help on the brown bag aspect of it, the postal authorities should really tighten up on who is taking out the P.O. box number. We have found with "Sixty Minutes" that the distributors would hire winoes, people like that, to be the front for the P.O. box number, and the real owner was removed several times back.

I think the post office could become much more secure and more aggressive in this area than they have.

Mr. **Ertel**. What you are saying, basically, is that there is a lack of priorities within the law enforcement establishment?

Mr. **Wooden**. Yes, sir.

Mr. **Ertel**. Which is basically within the executive branch of Government.

Now, we can enact laws here, we can emphasize that we want a change of priorities in their enforcement, but I don't think we can correct. I think that is beyond our power.

Mr. **Wooden**. I disagree to a point because if there is fingerprinting of people that work within public and private facilities where children shall be kept at public expense you could screen out a lot of people who are into this activity. You could screen out a lot of people. How are we going to protect the children?

Mr. **Ertel**. I prosecuted a lot of these people. I prosecuted a man who was active in scouting movement who was a chicken hawk. I have seen a lot of this. I prosecuted an individual who was making pornographic pictures in his home of youth. Now I convicted them under State laws.

I question whether the Federal Government has the authority under the Constitution to enact statutes which could have reached those individuals in the brown bag context, which I happen to think is much more devastating than we let on in the United States. The slick purveyor, probably there is a much smaller number of youth involved in that. I imagine a lot of it is the same, certainly it is reprehensible, but I wonder how and why the Federal Government can get into that. Is it not the State's position under the police power and should we not then encourage the State to prosecute here?

I am just asking your comments and your views on that.

Mr. **Wooden**. Well, it has been my experience, Mr. Congressman, working not only on the story but working 4 years on kids that are kept in institutions, for my book, it has been my experience that the States, especially the licensing laws that are there to protect children within institutions, are simply not effective. The States do not protect their children. The licensing laws are a farce. They are watered down by vested interests, they are lobbied down to almost nothing.

It is for that reason, Mr. Congressman, that a group of licensing workers from all over the United States met in New Orleans less than 3 weeks ago to form a national organization to try to get some teeth in licensing laws to protect children.

Right now I am afraid that if you give or if you leave this responsibility up to the State you will have your reoccurring scandal, I assure you. I don't know the legal hook.

Mr. **Ertel**. I understand what you are saying and I appreciate what you are saying, but I guess I have to come back to the power. Still we are a government of limited powers. Where do we have the authority to license State institutions? Where do we have the authority to require in that licensing, fingerprinting? That is one of the concerns I have.

Mr. **Wooden**. I do believe that the Congress or the Senate—Senator Kennedy and Senator McClelland have come up with massive legislation for uniform standards in the area of crime. Isn't that overstepping the Federal-State jurisdictional battle, power battle? I mean they have come up with standards and we desperately need to protect children that have never been a priority. We desperately need some Federal standards.

Mr. **Ertel**. Well, I am not sure, but if they are uniform standards, if they are the standards I am referring to, they are not enacted into law. That is strictly a commission or study suggesting that—if you are referring to the same ones I am, and I guess counsel agrees with me.

I worked on some of the committees who helped unify and do some of the studies prior to my coming here, so it really concerns me. If there were Federal funds involved in many of these things I think we probably could act.

Mr. **Wooden**. There are Federal funds involved.

Mr. **Ertel**. In some of them?

Mr. **Wooden**. There are.

Mr. **Ertel**. Not in the Boy Scouts, for example.

Mr. **Wooden**. There was one institution in Louisiana where the people that set up the institutions, they called themselves Monks from Canada, and they were criminals, that set up an institution to do pornography with children, and when the police broke into the facility and found the material and all the literature they found were applications for Federal money and they did receive Federal money.

Mr. **Railsback**. May I just try to distinguish between where Federal funds may be or may be funding a particular program or institution?

Mr. **Wooden**. Sure.

Mr. **Railsback**. I agree with what you say in that, in that case we probably would have a right to attach some conditions or standards.

What really bothers me is what you have alluded to and what others have, relating, for instance, to foster parent programs that may be strictly local in nature and where there have been inadequate screening procedures. Children have been assigned to a foster parent who may be ripping off that minor or that child. So you know what occurs. To me if you really want to mount a successful campaign, and I know that you do, without any doubt it is going to be mounted in my opinion, after hearing a great deal of testimony, after visiting with you, as a matter of fact, it is going to have to be mounted on the Federal level, it is going to have to be mounted on the State level. It would be a very good idea for us to coordinate with State Legislatures, the Council of State Governments, and I think really this thing is persuasive enough and it is complex enough, it is not just mailing pornography, it is child prostitution.

So I think that the first thing maybe we ought to do is concede that we can't help and we should and in my opinion, we will, but it is going to have to involve local law enforcement and State as well.

Mr. **Wooden**. I don't mean to believe that the Federal Government can do everything. Believe me after working on this problem I don't have that much faith in the Federal Government to do all that and to everything. But I do think there are a few areas where you can do something. I do think you can in the fingerprint area, I do think it is some type of uniform standards developed with the money that is made available in title 20, for sure with foster care money.

One little point about foster care. We found, and thanks to the cooperation of the Michigan State Police, a letter from one of the worst chicken hawks in this country, a man now on the loose, named Dire Grossman, who has been indicted for everything under the Sun, letters that he mailed out around the country to other chicken hawks telling them to get into foster care, telling them to go after Federal runaway money and how to do it. They actually gave instructions on how to do it.

Mr. **Teter**. If I may reclaim my time.

Mr. Wooden, I appreciate your concern. I think that we are all concerned with the same thing. I think that we are all trying to find a proper role for the various Government agencies to deal with this problem. However, we have to do it constitutionally. If we enact something which is not constitutional, what we have done is to say to those fellows: "It is wide open now." If it is declared unconstitutional, then it is open game, and I am very concerned about that as an attorney and a prosecutor, and as a former prosecuting attorney I saw what happened.

I remember one movie theater which was showing X-rated films, and they wanted to show previews of films. We will give you a free ticket. You will come and tell us whether they are obscene or pornographic. They showed up the next day, and they were not obscene. If it is obscene they are still going to show it because I cannot prosecute.

I think that it is a very valid criticism. I think that we have to be very careful in any kind of legislation we set up, so we can get a coordination and avoid unconstitutionality. I appreciate your comments and the fact that you pointed that out. There were not many witnesses who got to that point, and you did it very well and I appreciate it.

Mr. KILDEE. Mr. Jeffords?

Mr. JEFFORDS. I have no questions. Thank you.

Mr. KILDEE. Mr. Railsback.

Mr. RAILSBACK. I have no further questions except that I would like to say that I have the privilege of knowing Ken Wooden. I attended a conference of which he was the chief sponsor in North Carolina. My feeling is that we can focus attention right now, and the heat is on right now. I understand that some of these materials, are drying up right now.

I agree with one comment that you made. If we don't do something more substantive, and put the heat on right now, it is going to be back in about 20 or 30 years. So I think that it is up to us to act. When we act, however, I sincerely believe that it is going to require action on the part of the States and local governments.

Mr. WOODEN. Not quite, Congressman Railsback. I also admire you and the work that you have done, and what you stood for during the Nixon years. On that point, I would like to say that I don't think that the Congress served this problem for the kids well.

When you enacted the recent Juvenile Delinquency Prevention Act, and you were giving States 5 years, 3 to 5 years to take noncriminal kids out of the institutions. The States do not need that long to empty the city and county jails where kids are being kept today. I think that this was a very poor piece of legislation, and I hope that President Carter will veto it. I don't think that the States need 5 years to empty out the jails of noncriminal kids.

Mr. KILDEE. The committee thanks you for the work that you have done and are doing. We hope that these hearings will be more productive than the hearings of 1950. To have reminded us of that is a service, too. I do hope that we will meet the constitutional standards. Thank you very much.

Our last witness is Mr. G. R. Dickerson, Acting Commissioner, U.S. Customs Service, Department of the Treasury. Mr. Dickerson brings to us a very experienced background. He started with the Custom Service in a junior management position, and worked himself up to his present role. We welcome his expertise today.

TESTIMONY OF G. R. DICKERSON, ACTING COMMISSIONER, U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

Mr. DICKERSON. Thank you, Mr. Chairman.

My name is G. R. Dickerson, Acting Commissioner, U.S. Customs Service. I have with me today, on my left, Ms. Eleanor Susske, who is Chief of our Imports Compliance Branch in New York, and I believe she has testified before your subcommittee previously. On my left, I have Mr. Ted Rojek, who is Acting Chief Counsel.

Mr. KILDEE. Yes; Ms. Susske testified before the committee before.

Mr. DICKERSON. Mr. Chairman, I have a prepared statement. In view of the time, if you have no objection, I could summarize it very quickly.

Mr. KILDEE. Without objection, your entire statement, as submitted, will be made part of the record. You may go ahead and summarize.

[The prepared statement of Mr. Dickerson follows:]

STATEMENT OF G. R. DICKERSON, ACTING COMMISSIONER OF CUSTOMS

Mr. Chairman, I am pleased to have the opportunity to appear before this committee today on behalf of the Customs Service to offer comments on H.R. 3913.

The Customs Service has responsibility for interdicting all contraband, including pornography, at more than 300 ports of entry and along the land and sea borders of the United States, which stretch some 96,000 miles. Customs is comprised of approximately 14,000 employees dedicated to the collection and protection of the revenue, and the enforcement of laws which prohibit or restrict the entry of articles which could endanger the health and welfare of the citizens of this country. This task includes the enforcement of numerous statutes for approximately 40 different Federal agencies.

H.R. 3913 would add a new chapter to title 18, United States Code, making it a crime for a person to use children in the production of pornography and making it a crime for a person to transport or mail such pornography in interstate or foreign commerce, or to receive for the purpose of selling or to sell such pornography which has been transported in interstate or foreign commerce. It is clear that child pornography is an increasingly serious problem, and the Customs Service is dedicated to the prevention of the importation of such materials from abroad. The Customs Service believes that today, more than ever, it must be vigilant in stemming the importation of pornography, especially child pornography, which victimizes children in the most degrading way possible.

Customs officers enforce the prohibitions against pornography and other restricted materials at all ports of entry in the United States. Most importations of pornography, including child pornography, arrive in the United States via postal channels. Mail importations, which included approximately 42 million parcels and 30 million letters in fiscal year 1976, are processed by 21 Customs Mail Branches staffed by 472 Customs Service employees. By screening and examining mail the Customs Service interdicts a significant quantity of pornography. Sealed mail is detained and opened only where Customs officials have reasonable cause to suspect that contraband or dutiable items are contained therein. This determination is made based on several factors by which printed matter can be distinguished from correspondence. These factors include the size, weight and feel of the envelope and the origin of the letter.

The Customs Service in the Secaucus, New Jersey Mail Branch, recently began a special campaign to interdict child pornography believed to be entering the country through the mails. Intensive screening resulted in 25 detentions of sealed letter mail from Europe on the first day of the special effort. In one case, a pornographic film had been wound on a reel of magnetic tape and concealed under several feet of legitimate tape around the outside of the reel.

The importation of pornography is prohibited by 19 U.S.C. 1305, under which Customs may seize any materials believed to be obscene. Under present procedures, such materials must be submitted within 14 days to a United States District Court for the determination of whether they should be forfeited and destroyed as obscene.

At the major ports, imported motion picture film of a commercial nature is generally routed to a particular import specialist, an inspector, or a reviewing panel of supervisory inspectors for review. The motion picture may be viewed at the reviewing official's discretion, based on factors such as the title of the film, the country of origin, the Customs officer's knowledge of the importer, and his judgment based on experience. If the film is determined to be obscene, it is referred to a United States attorney for submission to a United States District Court for an obscenity determination. In the past 18 months, there have been no seizures of commercial films involving child pornography.

In calendar year 1976 alone, the Customs Service in the port of New York made more than 14,000 seizures relating to pornography, almost exclusively of a non-commercial nature, where individuals would attempt to bring into this country one or two items for their personal use. The number of seizures of pornography in other ports were relatively small, with the Los Angeles Region, reporting seizures of 563 pieces of pornography from October 1976 to May 1977, being second to New York. It has been estimated by Customs officials handling these matters that up to 60 percent of the materials seized last year contained child pornography.

While most of the pornography interdicted by Customs is noncommercial, Customs is constantly watchful for large commercial shipments. This year, for example, one commercial shipment of 3,000 magazines, all dealing with child pornography, was seized in New York City. A decree of forfeiture was issued by the district court on June 1, 1977.

Our intelligence indicates that commercial 35 mm master films (inter-negatives) are smuggled into the United States or entered into the country by fraudulent means. We know that when an inter-negative is smuggled into the country and reaches the distributor, it is easily and quickly duplicated and distributed to all parts of the country. This scheme has hampered our enforcement efforts under the smuggling statute, 18 U.S.C. 545, to obtain criminal prosecution of individual's found in possession of such pornographic films which are produced overseas or are duplicates of an inter-negative made overseas. In order to sustain a violation of the smuggling statute, Customs must demonstrate that the suspect film is, in fact, the inter-negative that was smuggled into the United States and that a legal entry has not been made. If possible the law should be strengthened in this regard by providing for the authority to seize all duplicates made from an inter-negative not legally imported into the United States.

By making it a criminal violation to transport or mail child pornography in foreign commerce, this bill would create a deterrent to the ordering of child pornography from abroad or the transporting of such material by a person entering the country. Under existing law, persons who declare the importation of child pornography, but do not attempt to smuggle it into the country, are not subject to any criminal sanction, although the importation would be seized under 19 U.S.C. 1305. H.R. 3913 would add a new dimension to such offenses and subject such person to a criminal penalty.

Furthermore, a shipment of child pornography, whether through the mails or by other means of carriage, could be the subject of a controlled delivery if it appeared that commercial quantities were involved and the recipient was likely to sell or attempt to sell the pornography. In a controlled delivery, a law enforcement technique proven effective in the narcotics area, the contraband is identified by Customs and then permitted to be delivered to the addressee under strict Government surveillance in order to identify and arrest those persons involved in the illegal transaction. Under the proposed bill, a controlled delivery would be essential to establish a violation because receipt of child pornography in and of itself would not constitute a punishable offense.

We do, however, see some difficulties in enforcing a statute limited to child pornography. From an enforcement point of view, it would appear extremely difficult to acquire evidence as to the identity and age of some child participants. It would appear difficult to determine from mere inspection of the pornographic materials whether persons exhibited are less than 16, especially in the age range 13–18. On the other hand, because this legislation is directed at the people who produce and disseminate pornography which involves children, that is at the people who exploit children by photographing them in the performance of the sexual acts listed in the legislation, and is not directed at the viewer, it would appear that an alternative standard based completely on the appearance of the individual would not be appropriate, because older children may appear less than 16. Such a standard, such as "reasonably appear to be less than 16," might encounter First Amendment free speech obstacles, because the appearance to the viewer, rather than the age of the child, becomes the important criterion. Nevertheless, this is not to say that Federal law enforcement officials could not use the appearance of participants, including physical development as a guideline in determining whether material should be seized and arrests made, especially in obvious cases.

The Committee may also wish to consider another amendment to the legislation. We believe the proposed provision would be strengthened if attempted acts and conspiracy to commit acts were made crimes as well. Often, because the United States only has enough evidence to prove an attempt, but not enough to prove the completed crime, individuals are not prosecuted and go free.

Because of the increasing circulation of child pornography in this country, the Customs Service believes it is necessary to keep more detailed records of pornography seized at the border in order to accumulate statistics as to the percentage of incoming pornographic material containing child pornography. Thus, in the future, we hope to be able to provide accurate information as to the amount of child pornography seized at the border and estimates as to the amount of child pornography which may be smuggled into the country.

In conclusion, the Customs Service recognizes the magnitude of the problems inherent in combatting child pornography, and, as the first line of defense against imported child pornography, Customs is dedicated to its interdiction at the border. We recommend that this Committee consider some of the changes suggested today, to facilitate law enforcement efforts by the Customs Service and other Federal agencies combatting child pornography. If these changes were incorporated in the bill we would not object to the legislation.

Thank you.

Mr. DICKERSON. Mr. Chairman, we are very pleased to have the opportunity to appear before this committee today on behalf of the Customs Service to offer comments on H.R. 3913.

As you know, the Customs Service has responsibility for interdicting all contraband, including pornography, at more than 300 ports of entry and around the perimeter of our country. We are particularly interested in one aspect of H.R. 3913, that which would make it a crime for a person to receive, for the purpose of selling, pornography which has been transported in interstate or foreign commerce.

Customs officers enforce the prohibitions against pornography and other restricted materials at all ports of entry in the United States. Most importations of pornography, including child pornography, arrive in the United States via postal channels.

We processed some 42 million parcels and 30 million letters in fiscal year 1976. By screening and examining mail, the customs service interdicts a significant quantity of pornography. The importation of pornography is prohibited by 19 U.S.C. 1305, under which Customs may seize any materials believed to be obscene. Under these procedures, such materials believed to be obscene. Under these procedures, such materials are submitted within 14 days to the district court for the determination of whether they should be forfeited and destroyed as obscene.

In calendar year 1976 alone, the Customs Service in the Port of New York made more than 14,000 seizures relating to pornography. It has been estimated by Customs officials handling these matters that up to 60 percent of the materials seized last year contained child pornography.

In addition to the mail which is seized, we also seize commercial shipments of pornography arriving in the United States. During just this current year, we have seized some five commercial shipments, two of these involving films, three involving magazines.

One of these was a shipment of 3,000 magazines all dealing with child pornography seized in New York City, for which a decree of forfeiture has been issued by the district court. I might point out, too, Mr. Chairman, that our action in these matters, if the pornography is properly entered in the United States, is limited to the seizure and possible destruction by court forfeiture. There are no criminal aspects involved in it. This accounts for our interest in this legislation.

In addition to commercial shipments in what are relatively normal channels in the United States, we are very much concerned about we believe is another method of distribution of child pornography. That is the introduction in the United States by smuggling of the master negative, or a master film.

If we cannot identify the master film, we cannot take criminal prosecution action under 18 USC 545. Of course, it is extremely difficult since that film brought in the United States will be reproduced and distributed. We would suggest that the committee consider the possibility of granting seizure authority for reproductions which we can show resulted from a master film introduced in the United States illegally, or smuggled into the United States.

This bill, as we understand it, by making it a criminal violation to transport child pornography, would give us much needed additional authority. Currently, where we seize even commercial shipments destined to a major distributor, as I pointed out, we are limited only to the forefeiture of that material.

As we understand this bill, it would give use authority, if we could show that it had been imported for the purpose of resale, to proceed with criminal prosecution. This could be done by what we call a controlled delivery investigative method in which we would permit shipments to move on to the addressee in cooperation with postal authorities, If at the time it was received, we could assure ourselves that it was being received for the purpose of resale, we would be able to arrest those persons, and to seize the shipment under criminal statutes which we understand would be provided by this bill.

We, like the Post Office Department, see some difficulty in enforcing a statute limited to child pornography, since it would appear extremely difficult to acquire evidence as to the identity and age of some child participants, particularly where the filming may have taken place overseas. There are no specific recommendations as to how this can be overcome, but we would point out to the committee that it is a difficulty we have foreseen.

We would also hope that the committee would consider possible legislation to strengthen our authority by considering expanding the language to include attempted acts or conspiracy to commit acts covered by this bill. In many instances, we may not be able to actually prove the act of smuggling in the United States, or the act of transportation that would be covered by this bill. We might, however, be able to prove an attempt to commit a criminal act or a conspiracy to do so.

Mr. Chairman, we in the Customs service are certainly aware of the problem of child pornography. As I pointed out, today some 60 percent of the seizures we make, which is quite different to what it was several years ago, involves child pornography. We see a greatly expanding market in the distribution of this kind of pornography.

We certainly are going to attempt to do everything we can, within our power, to deal with this problem to the extent that it involves the international movement of child pornography. We would certainly encourage this legislation, and hope that you would consider the factors that we have brought to your attention, which would help to strengthen our enforcement authority on international movements.

Thank you, Mr. Chairman. We will be happy to answer any questions you may have.

Mr. **Kildee**. Thank you, Mr. Dickerson.

You have two types of entries, legal entries, and illegal entries. If it is an illegal entry, whether it be screwdrivers or tools, or machinery, or pornographic materials, then you can bring criminal sanctions, if it is smuggled into the country.

Mr. **Dickerson**. Yes, sir, that is correct. Under our general statute, we can proceed criminally.

Mr. **Kildee**. No matter what the material might be?

Mr. **Dickerson**. That is true.

Mr. **Kildee**. With pornography, even though it is legally entered and declared, if you can establish that it is pornography, and take it to a district court—I think Ms. Susske told us in New York that even though it is legally entered and declared, but you deem it to be pornographic, the district attorney would take it into court, and then that material is destroyed.

Mr. **Dickerson**. If the court agrees that it is.

Mr. **Kildee**. Neither the sender nor the person receiving the material is guilty of any crime.

Mr. **Dickerson**. There is no action taken against the sender or the receiver, in that case, other than possible financial loss by losing a valued shipment.

Mr. **Kildee**. The 60 percent you say is child pornography, is most of that illegally entered, and subject to sanction, or legally entered and pornographic?

Mr. **Dickerson**. Most of what we have seen has been declared. It may be that a commercial shipment has been entered illegally in the United States, if it is in the mail and it may not have been declared per se as a shipment of pornographic material or films. It would not be considered smuggling in the mail, since it has been presented to us for proper inspection and clearance.

Mr. **Kildee**. From what I could gather from the hearings in New York, when you make that judgment—Ms. Susske indicated that when you make the judgment, and you get a Federal attorney to agree that this is what you have, you have had a fairly good success record in the courts in destroying that material.

Ms. **Susske**. Right.

Mr. **Kildee**. If we were to create a special category, without changing the present laws on pornography, a special category on child pornography, do you think that this would make it easier to secure court agreement that it is pornography and should be destroyed?

Ms. **Susske**. Anything that could help our enforcement, of course, would be appreciated. However, the materials that we seize in the New York region, that we would characterize as child pornography, is hardcore pornography, and we have no problem with it. It passes the *Miller* test without any problem.

Mr. Kildee. So right now the courts pretty well recognize child pornography as hardcore?

Ms. Sulske. Yes.

Mr. Kildee. You indicated, Mr. Dickerson, that you would like to have the power to seize and bring criminal sanctions against reproduction of the master film that was brought into the country contrary to our orders. Is there any precedent for that in the other type of commodities, such as ordinary photographs, and not pornographic photographs?

Mr. Dickerson. You are talking about bringing in a different commodity?

Mr. Kildee. Let us take an ordinary photograph sent in, and it is reproduced.

Mr. Dickerson. I am not aware, right offhand, of where this particular idea has been applied to a different type of commodity. We have had experience, particularly with pornographic material, where we have not been able to identify that it was brought in and reproduced. We could not get the actual master that was brought in, and we were powerless to do anything with the reproduced copies that had been made.

As a matter of fact, a recent issue of "Hustler" magazine was brought to my attention, to demonstrate how purveyors of such material, through advertisements in magazines of this type attempt to avoid problems with Customs. They have developed distribution points in the United States that you can go to.

The film has been brought in and is being reproduced, and will be available through domestic channels which eliminates the possibility of us taking any action in that type of distribution.

Mr. Kildee. It would be outside your jurisdiction?

Mr. Dickerson. It would be outside of our jurisdiction and probably difficult for the post office to deal with.

Mr. Kildee. Mr. Jeffords?

Mr. Jeffords. To get right to that problem, I have a suggestion which you may have heard about. If you have been here all morning, you have. I want to get right to the problem of the master in controlling the distribution of child pornography, and trying to make it easier for people to enforce our existing law, whether it be in addition to another Federal law in the pornography area, and State laws.

It was brought to my attention that on the west coast there are real problems as far as their own domestic actions, where you are trying to establish where the crime took place, in establishing the age of the participants, and whether they were minors or not.

The suggestion I have, and I have put it out to the prosecutors and other people even in the movie industry. Before someone could introduce into commerce any pornography which was imported, if they were required to file a certificate, either with the Secretary of HEW or the Secretary of Labor, which would merely set forth the names of anybody under 18 performing a sexual act, the place at which it occurred, and the time. The necessary data to give the enforcement people the opportunity to review it, and to enforce against.

To make it a penalty to put it in distribution without a copy of the certificate attached. As to whether this would be of assistance in trying to determine the master, or to keep these things out of the black market, or out of the legitimate market.

Mr. DICKERSON. That would be one approach to it. We take somewhat the same approach on normal commercial shipments coming into the United States. We are not able to screen every film that comes in. We receive a certificate from the importer, which sets forth in broad terms that there is nothing that could be even questionably pornographic in it.

The other types of films, of course, are not legally entered into the United States. They are probably smuggled in the United States. Take just one canister of 35 millimeter film, it is easy to conceal that in a suitcase, or any place else. It is smuggled into the United States, and then reproduced.

Your suggestion, it seems to me, would be helpful if you had to have a certificate for the reproductions.

Mr. JEFFORDS. The distributor would have to say: "We have filed with the Secretary of HEW, or whoever it would be, the names and ages of all the participants in the film." If they have not filed it, then they would also put the burden on the retailer to at least check and make sure that the certificate had been filed.

If it were a counterfeit one, they would be held liable, because all you would have to do would be to call the Secretary of Labor, or whoever, and say: "Was there a certificate filed?" Then if it were not filed, the violation would be for selling it without that certificate being filed.

Mr. DICKERSON. It would be very helpful, from our standpoint, if we had the authority to seize, where we can identify the film to be a reproduction of a smuggled master film.

Mr. JEFFORDS. I see no objection to that.

Mr. DICKERSON. It would be very helpful to have the two coupled together in controlling this type of activity, but we would not be involved. I don't think that we would be involved in enforcing the law as to certificates, as you pointed out. It would not be Customs jurisdiction.

I do not think that we, in Customs, would be able to react to every type of reproduction of foreign masters here. So there are two separate problems, and part of this suggestion could be helpful in dealing with this type of distribution.

Mr. JEFFORDS. Thank you very much.

I have one further question. Maybe I did not read the statement right, but it is my understanding that you have not made any seizures of films involving children for some 18 months.

Mr. DICKERSON. No commercial seizures of movie films.

Mr. JEFFORDS. Does that mean that the market has diminished or has become domestic, or can you draw any conclusion from that fact at all?

Mr. DICKERSON. Let me ask Ms. Susske.

Ms. SUSSKE. When we refer to a commercial shipment, we mean of the type than can be shown in a threater. Now we have had a number of seizures of the small 8 millimeter motion picture films dealing with child pornography. Of course, that could be turned into a commercial transaction, too.

Mr. JEFFORDS. Thank you for clearing that up.

The other question I have, and you need give only a short answer on this one. Relative to all your problems in importations of illegal stuff coming in, what part of that is dealing with pornography now. Is that a large part, or a substantial part?

Mr. **Dickerson**. Because of the problems that have been mentioned by a number of the people who have been here, there is, of course, a basic problem of identifying what exactly is obscene under current court rules. What 20 years ago we would have considered obscene would not be considered startling in any respect now.

So what we seize principally today is obvious hardcore pornography. We are limited in the amount of screening that we can do of any type of mail. Probably the maximum amount that we are doing is 10 percent of letter mail, which the is major source for transmission of pornography. Much less than 100th of 1 percent is actually opened for this purpose. So it is not a large part of our resources.

Mr. **Jeffords**. Thank you very much.

Mr. **Kildee**. Mr. Dickerson, you mentioned that sealed mail is opened when you have a reasonable cause to suspect that it is contraband or dutiable. How do you determine, or how have you determined reasonable cause; is it based on some court guidelines or some precedents within Customs?

Mr. **Dickerson**. I might answer it very generally, and ask Mr. Rojek to speak to it more particularly.

Mail is identified by the post office many times as being bulky, or meeting certain criteria which indicates that mercandise other than written material is contained in it, and it will be turned over to us. In addition, in some areas we will screen letter-mail coming from certain countries which we consider to be sensitive. From the standpoint of contraband purposes, we can determine by visual observation of the outside of the material.

As to specific guidelines, I think that Mr. Rojek might be able to speak to that.

Mr. **Rojek**. Mr. Kildee, as you are probably aware, the Supreme Court handed down a decision on Monday of this week in this area. This is the first decision by that court in the long history of Customs that dealt with the question of whether or not a search warrant was needed in order to open sealed letter class mail. The court refers to circuit court decisions that held no search warrant was necessary.

In those instances, generally, the envelope that was used was one that was of a size that would indicate it contained something other than correspondence. In addition, the Customs officer could tell by the outward feel and inspection of the envelope that there was something in there besides the written material, and it could be merchandise of some kind.

Then, of course, as Mr. Dickerson has already indicated, the people that screen this develop a certain sixth sense. There are certain countries of origin and addresses of origin that become known after a period of time as the originators of this type of material.

Perhaps Ms. Susske could address herself to that also. The decisions to date have not addressed the precise question of what type of criteria would be required by the court to constitute reasonble cause to suspect because in each of those cases the evidence that came out in the course of the hearings on the motion to suppress, quite obviously constituted such cause.

Mr. **Kildee.** That will conclude our questions. Apparently the Customs Service and the courts, gathering from what we found out in New York, have had a higher degree of success in determination of what constitutes pornography than some other agencies of Government, either in illegal entry or in determination of pornographic material. It is in the illegal entry that you have had high degree of success in New York particularly.

Mr. **Dickerson.** Yes, sir. Seemingly we have had much success in the southern district of New York in the case of small seizures of noncommercial types.

Mr. **Kildee.** I would suggest that perhaps the committee would like to get the court decisions in some of that, to see what they based their determination of pornography on. It would be very helpful to the committee, if you could supply that to us. Some of the court decisions would be helpful to us in our determinations.

Mr. **Dickerson.** There is one point that I would like to make on this. It is very rare that what we send to the courts is not considered to be obscene. But you must consider the fact that usually it is uncontested. Quite often it is uncontested.

Also in many of the situations where we have criminal prosecution, we are not dealing with the jeopardy of the individual. We are dealing with the jeopardy of the merchandise.

Mr. **Kildee.** It would still be interesting to get some of the court decisions to see what criteria they have used to base their determinations on.

Mr. **Dickerson.** We will be very happy to supply that. If I could amplify a little bit.

The question was asked of a number of witnesses as to the amount of foreign mail as against domestic mail. Of course, we are involved in a number of investigative task forces concerning this as well, as well as the interdiction actions that we have taken.

There is no doubt that if that question had been asked about 10 or 15 years ago, even 5 years ago, I would have said that a major portion of the pornography was produced outside the United States. We could have identified the countries where it was produced.

We believe that this has shifted considerably, and there is a much larger market developing in the United States, an additional market in the United States. In fact, the United States has become a major supplier of child pornography for foreign countries, particularly a major supplier for Japan and Canada, for example.

In this area, we are limited on what we can do on exportation because there is nothing that makes it illegal to export pornography, or even permits us to seize pornography intended for export.

So it might be another area that the committee might want to explore and consider more deeply. It would have some definite impact upon the production of child pornography in the United States.

Mr. **Kildee.** On that, have you found any evidence of pornography being exported from the United States, being reproduced cheaply elsewhere, and sent back to the United States?

Ms. SUSSKE. Not particularly. Pornography that is manufactured in the United States and sent to foreign countries and then returned to the United States is subject to all of the Customs laws just as if it were an original importation. We have had seizures of that type of material.

Mr. KILDEE. Something that has been exported and then brought back.

Mr. DICKERSON. Yes. Incidentally, we are going to initiate an intensive operation dealing with all types of contraband in the mail in the very near future; not only pornography, but other types of contraband in the mail with some emphasis on pornography. When this is undertaken, I would be glad to keep the committee informed as to the results of those developments.

Mr. KILDEE. We would appreciate that very much. We appreciate your testimony today, and also Ms. Susske's testimony in New York. It was very helpful to the committee.

The committee will stand adjourned.

[Whereupon, at 1:50 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

SEXUAL EXPLOITATION OF CHILDREN

TUESDAY, SEPTEMBER 20, 1977

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE COMMITTEE OF THE JUDICIARY,
Washington, D.C.

The subcommittee met at 1:20 p.m. in room 2237, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the subcommittee] presiding.

Present: Representatives Conyers, Ertel, Volkmer, Railsback, and Ashbrook.

Staff present: Leslie E. Freed, counsel; Tom Boyd, and Roscoe Stovall, associate counsel.

Mr. CONYERS. The subcommittee will come to order. We begin in the Subcommittee on Crime our fourth hearing on the issue of sexual exploitation of children.

[The opening statement of Chairman Conyers follows:]

OPENING STATEMENT OF HON. JOHN CONYERS, JR., CHAIRMAN, SUBCOMMITTEE ON CRIME, ON THE SEXUAL EXPLOITATION OF CHILDREN

I am pleased to welcome here today the members of the Subcommittee on Crime, witnesses, and visitors to participate in a serious and important activity. The Subcommittee is holding its fourth hearing on the issue of the sexual exploitation of children.

During the past four months we have carefully explored the need for Federal legislation on this matter. We have received testimony from people who have had a familiarity with children and with photographers who have engaged in the conduct sought to be regulated. We invited this testimony in an attempt to determine the nature and scope of the problem. Investigator Lloyd Martin of the Los Angeles Police Department detailed for us the activities of the special force he set up to combat the problem in California. Writers for the Chicago Tribune came to us with the background of their investigations in the area and particular cases they uncovered. A professor of sociology spoke to us about the effects of adult sexual abuse upon child victims. We spent another day of hearings listening to a representative of the ACLU, private attorneys, and a representative of the National Association of District Attorneys address the sections of the bill, H.R. 3913, which is before us and discuss their constitutionality. Finally, the Department of Justice, the U.S. Customs Service and the U.S. Postal Service who enforce present Federal Obscenity law came to us with their concerns about the enforceability of the bills before the subcommittee.

No one is for child pornography. I and other members of the subcommittee am horrified by the instances of adults physically and sexually abusing children. We have heard of parents who sell their children to pederasts for prostitution purposes. We have been shown lewd photographs of children and adults engaging in sexual activity. The Subcommittee staff has received hundreds of letters from the public expressing disgust at the revelations in the press accounts, television reports, and witnesses statements before the House and Senate subcommittees investigating the matter. Surely, in this country, a survey of the "community standard" for freedom of expression would not allow for child pornography.

But we on the Judiciary Committee are faced with a serious consideration. We must determine how the states under present state law are coping with the problem. We need to know in what areas they would turn to the Federal government for assistance. It is for that reason that we commissioned the National Conference of State Legislatures to survey the individual states and ascertain the content of their laws. We will be hearing a report today from their representative, Kenneth Maddy, on the results of that study.

We have asked a former U.S. Attorney from Memphis, Tennessee, Mr. Larry Parish, to tell us of his experiences prosecuting under present Federal obscenity law, and we invited Delaware State Attorney General Richard Wier to tell us how his state came to enact a new obscenity law encompassing child pornography. A local prosecutor, Robert Gemniangni, will tell us today how he gets convictions in these cases on a county level. Finally, we will benefit from hearing from Mr. Herald Fahringer who does defense work in the area of Federal obscenity law, who will discuss the constitutionality of the proposals before our Subcommittee. He will be accompanied by probably his most famous client, Larry Flynt, publisher of Hustler Magazine.

After the members assess the testimony of our witnesses today, we will be better able to determine where Federal law is needed. The Senate Judiciary Committee has reported a bill just last week which shows considerable restraint yet deals with some of the major issues we have discovered. I have a bill before the Subcommittee which would amend the "White Slave Traffic Act" commonly known as the "Mann Act" to prohibit the transportation of all minor persons, not just females, across state lines for the purpose of engaging in the business of prostitution. Some of our witnesses today may want to comment on these bills. I expect today's hearing will provide a reliable basis on which the subcommittee may deliberate, and I again welcome all the participants.

Mr. CONYERS. We have a rather extensive witness list today, and we are going to ask that the witnesses summarize, if they can. Our first witness will be Assemblyman Kenneth Maddy, chairman of the Assembly Committee on Criminal Justice of the California Legislature, representing the National Conference of State Legislatures.

He has coauthored several bills on child pornography and this committee has dealt with the topic extensively. California has passed three of the strictest bills in the country on child pornography, and Mr. Maddy is appearing not only on his own behalf, but on behalf of the National Conference of State Legislatures, which of course comprises all of the legislators in the 50 States, and their staffs.

We welcome you, Assemblyman, and appreciate your remarks you have prepared in advance. They will be incorporated into the record. You may introduce who is with you and then begin.

TESTIMONY OF KENNETH MADDY, ASSEMBLYMAN, CALIFORNIA LEGISLATURE, AND CHAIRMAN OF THE ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE, REPRESENTING THE NATIONAL CONFERENCE OF STATE LEGISLATURES, ACCOMPANIED BY BRUCE NESTANDE, ASSEMBLYMAN, CALIFORNIA LEGISLATURE

Mr. MADDY. Mr. Chairman and members of the committee: It is my distinct pleasure to be here this afternoon to discuss this issue with you. I am appearing on behalf of the National Conference of State Legislatures as well as myself today. On my right, because he was with us today in Washington, is assemblyman Bruce Nestande, also a member of the California Legislature, and chairman of the legislature's Human Resources Committee.

We have extensively dealt with the question of child pornography in California in the last few months and I will try, since I have submitted the statement and you have that before you, as well as the charts prepared by the National Conference of State Legislatures, to summarize somewhat what we did in California.

I think all of you are well aware that the sexual exploitation of children has regrettably flourished and has become a highly profitable branch of the pornography industry.

We in California are suffering greatly from that because in two of our key centers, Los Angeles and San Diego, pornography involving children has indeed flourished and is rampant throughout our communities.

Throughout the last year I think in California, as in other States, the public became aware of what they were seeing and they were apalled by it. NCSL contacted State legislators throughout the country in every State and we began to see that additional legislation has been enacted.

I think the legislatures throughout the country have responded well.

The National Conference of State Legislatures has participated and helped in drafting legislation, as well as in circulating information to all the States in terms of what other legislatures are doing, and how we could meet the problems in our various States.

The chart was prepared after a response from all of the State legislatures. It is a comparative chart, and shows the various approaches that have been taken by the States.

Prior to the 1977 legislative session, the chart shows very few States had laws prohibiting the use of children in obscene materials or performances and those that did exist were in broad language and prosecution was difficult.

During the past year 24 States considered legislation to outlaw the exploitation of children in those States, and it is my understanding that 16 States have enacted strong laws, another 6 are coming into being in the next year. In addition, two States had statutes prior to the 1976–77 session.

Legislative action will, without a doubt, be even more complete by the time the legislatures adjourn in 1978.

A number of States have indicated they will introduce bills in the upcoming sessions. There are some States which have not taken any action. The chart will tell you that those States are the more rural States, and the staff members from those States have indicated that the pornography business in general, and the child pornography specifically, were not major problems in their States. That may change, obviously, as this material is beginning to be circulated, and of course they have now some material to look at based on what we have done in other States.

Almost all of the statutes that have been adopted contain two major provisions. One attempts to prohibit the actual abuse of children, whether it be by the parents or by those responsible for preparing the pornography. The second section seeks to reduce the profit motive and to curtail the import from out of State by forbidding the sale and distribution of such products.

These legal provisions have been drafted a number of different ways. One of the common approaches has been to amend the State's obscenity or pornography law by adding a separate section that specifically creates offenses for abusing or permitting children to make pornography materials and also marketing of pornography.

In some statutes the definition of prohibited conduct conforms to the State's general definition of prohibited obscenity. And I think in some of them they have taken a different approach and have tried to define child pornography in a different way.

Other States have created separate offenses within their criminal codes. These laws are similar to those amending general obscenity laws, but avoid the confusion related to legally defining obscenity. They prohibit using or permitting children to be filmed or photographed in specific prohibited sexual acts, and also forbid the sale of any of these materials.

A few States have chosen to amend their child abuse laws by including the offense of allowing or using children to perform in or be recorded in a sexually explicit act. Massachusetts is considering a bill amending its child labor laws, to outlaw the employment of children for posing or exhibiting in any act depicting sexual conduct.

More recently, States have enacted a combination of these approaches, and that is what we did in California, we touch on almost all areas.

Several States have considered the problems confronting prosecutors in gathering evidence against those who sell or produce child pornography, and have included special provisions. Delaware, for example, has passed a strong law for regulating adult bookstores and requires detailed records to be kept of all transactions from wholesalers and distributors. Some States, like Louisiana, have included a provision stating that possession of three or more items is prima facie evidence of intent to sell or distribute.

Penalties attached to these new laws are stiff, reflecting the seriousness with which these practices are viewed. Most are around $10,000. Illinois has placed a $25,000 fine on the first offense and $50,000 for subsequent offenses. Prison terms vary, but provide for up to 10 years imprisonment in most States.

There are several States that did not enact laws, and I think primarily they feel that the laws they now have on the books, in dealing with the conduct involving children, were explicit enough and it took care of the situation.

To touch briefly, if I may, on the laws we enacted in California, we had an obscenity statute that dealt with bringing materials into California and/or distributing it in California, which called for a misdemeanor penalty. We took a separate paragraph, and added to that statute the general misdemeanor provision for distributing obscene material and added that if you are going to distribute materials that involves depicting children under 18 years of age, engaging in certain specified acts, that it would be a felony, carrying for the State of California a second level felony penalty under the determinate sentences law of 2, 3, or 4 years, with the possibility of $50,000 fine. That was dealing with materials that were defined as obscene under the present statute and merely adding additional penalties for those who deal with obscene materials that depict children.

That was one approach and that bill passed both houses of the legislature, and now awaits the signature of the Governor.

In the second approach, we incorporated three bills into one by Senator Presley, who was the Select Committee on Children and Youth Chairman, and we dealt then with several approaches.

One, we took labor code provisions that we had in California law, and added a provision that would involve the employment of children under the age of 16 years of age for certain explicit acts—posing, modeling, in terms of sexual acts. And we added additional penalties, made that a felony, and again with 3, 4, or 5 years. We also took the labor code provisions and required, as mentioned in the statement, provisions whereby people who retail and/or distribute the material must report or maintain reports as to where they received the material.

And this, in a sense, is a harassment provision that prosecutors and/or law enforcement can obtain from people who distribute generally explicit sexual material, a requirement that they must tell us where they received that material. And this gives law enforcement a chance to trace back to the original distributor, if we can, or the producer, if we can. And that is the tough person to find, where the material originated and in what manner it originated and of course if they do not, the distributors at each level would face misdemeanor penalties.

So, in sum, we have an approach, I think that was a broad approach in California to take care of the initial problem.

We in California maintain an obscenity statute that is in conformity with the *Memoirs* decision. We have not adopted the broader decision of *Miller* in the State of California yet. Our committee placed that question for decision later this year. We will hold hearings in California on the question of whether or not we ought to adopt the *Miller* standard for obscenity in California.

Second, we took the question that was posed to us by one of our Senators—we had about 9 or 10 bills on the question of pornography in California to deal with. One of the Senators introduced the variable obscenity concept, taking child pornography and trying to define it in a different manner, and we have delayed that decision also for the interim study.

So we will take up those two questions later on this year. I trust I can answer any questions you may have about California in general or about the statutes that are compared in the chart. Mr. Nestande also might help me if I get stuck.

[The complete statement of Mr. Maddy and the charts follow:]

Statement of Assemblyman Kenneth Maddy, California Chairman, Committee on Criminal Justice, National Conference of State Legislatures

Mr. Chairman, it is my pleasure to appear before you and the distinguished members of the Subcommittee on Crime of the House Committee on the Judiciary. My name is Kenneth Maddy, and I am Chairman of the Assembly Committee on Criminal Justice in the California Legislature. I am appearing today on behalf of the National Conference of State Legislatures, which is comprised of the nation's 7,600 State legislators and their staffs from all 50 States.

Among its many functions, the National Conference of State Legislatures works to improve the quality and effectiveness of State legislatures, and to foster interstate communication and cooperation. When a problem like the proliferation of child pornography suddenly confronts lawmakers in almost every State, the NCSL provides assistance to State legislators as they develop legal solutions and shares information about newly enacted laws.

As you are well aware, the sexual exploitation of children has regrettably flourished and become a highly profitable branch of the pornography industry.

The production of child pornography expanded rapidly, partly because existing State laws were inadequate and prosecution of the producers and distributors was quite a difficult undertaking.

Throughout the last year as the public became aware of the extent of this deplorable abuse of children, State legislators across the country began to respond by reviewing their existing laws and enacting specific prohibitions and stiff criminal penalties. To assist State lawmakers react to the need for new laws, the NCSL recently conducted a survey of all 50 State legislatures to determine what types of new laws have been enacted or considered. Each legislative research office was asked to describe any new laws recently enacted which would curtail the production and dissemination of child pornography. In addition, States without a specific new statute were requested to identify existing statutes that could be used to prosecute those responsible for using children in obscene materials and selling them for profit.

NCSL received a response from almost every state, and the results have been compiled in a comparative chart. I am pleased to present this survey to the subcommittee, and to summarize the results for you.

Prior to the 1977 legislative sessions, very few States had laws prohibiting the use of children in obscene materials or performances and those that did exist were generally written in broad language without adequate powers for prosecution. During this past year, however, 24 states considered legislation to outlaw this exploitation of children. Of these 24 States, the unusualy high number of 15 States enacted strong, comprehensive laws and final approval is expected before the year's end in an additional 6 States. In addition to these 21 States with new statutes, the States of West Virginia and North Dakota had previously enacted laws in 1974 and 1975 respectively.

Legislative action will without a doubt be even more complete by the time legislatures adjourn in 1978. A number of the States indicated that legislation will be introduced in their upcoming sessions, and in many cases, bills have already been introduced. The three States that did not approve the bills last year will resume their consideration and an additional 11 States will be considering legislation. In all these States, I can assure you the interest in passing legislation is very strong. It is very likely therefore that in 1978, 37 States will have adopted tough prohibitions against using children sexually for preparing pornographic materials. I know of no other issue where State lawmakers have been able to react so quickly and completely to a problem confronting their States, as in curbing the sexual exploitation of children.

Before I summarize the types of provisions commonly enacted, I would like to briefly mention those remaining 13 States without specific laws and where no legislation is expected at this point. Those States are Alaska, Arkansas, Georgia, Idaho, Iowa, Kansas, Maine, Montana, Nebraska, Nevada, Oregon, South Dakota, and Wyoming. As you can notice, these States are primarily rural, and staff members in each State's legislature explained that pornography in general and child pornography specifically, were not problems in their States at this time.

Almost all the statutes adopted and considered in each State generally contain two major provisions. One attempts to prohibit the actual abuse of children, whether it is by parents or by those responsible for preparing the pornography. The second seeks to reduce the profit motive and to curtail imports from out of State, by forbidding the sale and distribution of the products.

These legal provisions have been drafted in a number of different ways. One of the more common approaches has been to amend the State's obscenity or pornography law, by adding a separate section that specifically creates offenses of using or permitting children to make pornographic materials and also of marketing the pornography. In some of these statutes, the definition of prohibited conduct conforms to the State's general definition of prohibited obscenity. These State obscenity laws have generally been revised to conform to the Supreme Court's decision regarding regulation of obscenity. Other States merely prohibit certain sexual acts involving children.

Other States created separate offenses within their criminal codes. These laws are similar to those amending general obscenity laws, but avoid the confusion related to legally defining obscenity. Instead, they prohibit using or permitting children to be filmed or photographed in specific prohibited sexual acts, and also forbid the sale of any of these materials.

A few States nave chosen to amend their child abuse laws, by including the offense of allowing or using a child to perform in or be recorded in a sexually explicit act. In still another approach, Massachusetts is considering a bill amending its child labor laws. The bill would outlaw the employment of children for posing or exhibiting in any act depicting sexual conduct.

More recently, States have enacted a combination of these approaches. The bills currently before Michigan's legislature and those recently enacted in my own state of California are examples of comprehensive approaches.

Several States have considered the problems confronting prosecutors in gathering evidence against those who sell or produce child pornography, and have included special provisions. Delaware, for example, has passed a strong law for regulating adult bookstores, and requires detailed records to be kept of all transactions from wholesalers and distributors. Some States, like Louisiana, have included a provision stating that possession of three or more items is prima facie evidence of intent to sell or distribute.

Penalties attached to these new laws are stiff, reflecting the seriousness with which these practices are viewed. Almost without exception, these offenses have been classified as felonies. Fines of course vary from State to State, but most are set around $5,000 to $10,000. Illinois has placed a $25,000 fine on the first offense and $50,000 for subsequent offenses. Prison terms likewise vary, but provide for up to 10 years imprisonment in most States. Delaware has included the option of life imprisonment for a second offense.

Finally, I would like to speak about those States who have not yet enacted a statute to specifically prohibit child pornography. In answering the survey, many States identified existing laws which could be applied against child pornography, with varying degrees of success. Most often mentioned were the State's existing obscenity law. While prosecutors have noted difficulties in meeting criteria for bringing litigation against pornography in general, most child pornography would undoubtedly fall within the definition of obscenity for those States. Second, all States have some form of law prohibiting child abuse, and many include specific offenses for sexually abusing children.

Most State codes also contain a long list of offenses forbidding adults to contribute to a minor's delinquency and proscribing many sexual offenses, such as rape, incest, indecent or immoral conduct with minors, using children in improper vocations, or exposing them to immoral behavior. Penalties however are generally weak, the language is broad, and it is often difficult to apply laws beyond the parents or actors.

Mr. Chairman, I hope you will agree with me that in the past year we have made substantial progress in the fight against child pornography. Admittedly, the abuse will continue until the laws can be enforced and laws are enacted in those States still without adequate protection. But the groundwork is well underway for ending these practices which could destroy the lives of so many of our young people.

Thank you for the opportunity to meet with you today. I will glady answer any questions you may have about the survey, or the legislation recently enacted in my own State.

PASSAGE OF STATE CHILD PORNOGRAPHY LEGISLATION

Enacted	1977 pending	Not enacted	1978 expected	No legislation
Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Louisiana, Minnesota, Missouri, New Hampshire, New York, Ohio, Rhode Island, Tennessee, Texas.	Massachusetts, Michigan, New Jersey, Pennsylvania, South Carolina, Wisconsin.	Hawaii, North Carolina.	Alabama, Indiana, Kentucky, Maryland, Mississippi, New Mexico, Oklahoma, Utah, Vermont, Virginia, Washington.	Alaska, Arkansas, Georgia, Idaho, Iowa, Kansas, Maine, Montana, Nebraska, Nevada, Oregon, South Dakota, Wyoming.

Note: North Dakota (1975), West Virginia (1974).

State and law	Approval	Provisions	Penalty
ALABAMA			
No child porn law; legislation expected in 1978—alternative: Obscenity law.			
ALASKA			
ARIZONA			
Title 13, ch. 2, art. 28, sec. 13-538 effective May 31, 1977.	Obscenity laws	Illegal to film, photograph, develop, distribute, exhibit, transport or sell film, photo, slide or motion picture or negatives of activities involving minors in sexual conduct which is obscene.	Felony; $10,000 to $20,000 fine and/or 5 to 10 yr.
ARKANSAS			
No child porn law; alternatives: Obscenity law, sexual solicitation of child, contributing to delinquency, rape.			
CALIFORNIA			
1977: AB 702	Pornography	Prohibits employment or use of children under 18 for specific sexual activities for commercial purposes, including display; forbids sale, distribution, exhibition, publishing or printing any such material.	Felony.
AB 1580	Obscenity	Prohibits sending or bringing into State for sale or distribution any obscene matter with a minor under 18 engaged in specific sexual acts.	Felony; $50,000 and/or 2 to 4 yr.
SB 817	Child labor	Illegal to hire or use a minor for purposes in AB 702, or to promote, employ, use, permit, persuade, induce, entice, or coerce a minor to pose or model in film, photograph, negative, or performances involving sexual conduct.	Felony; 3 to 5 yr if child is under 14.
		Requires reporting to police within 24 hr misdemeanor.	$2,000 and/or 1 yr.
		Requires detailed records of transactions involving films, photographs, slides, or magazines with minors engaged in sexual conduct.	Misdemeanor, $5,000.
COLORADO			
Sec. 218-7-102	Obscenity	Illegal to use child under 16 for hard core sexual conduct if that act will be photographed, filmed, or part of a live performance.	Class 5 felony.
		Promoting, as owner, producer, director, manager, performer, or distributor also illegal.	Do.
CONNECTICUT			
PA 77-577	Child pornography	Illegal to use or permit the use of a child under 16 in an obscene performance; authorizes commissioner of children and youth services to assume custody of children; created a division of 3 attorneys to prosecute cases of child abuse (including sexual abuse) and appropriated $45,000 for fiscal year 1978.	Class B felony.
DELAWARE			
Ch. 5, subch. V, title 11, S 1103, 1108, and 1109 (1977).	Amend sexual exploitation of children law.	Illegal to photograph, film, finance or produce a film, or publish a book, magazine, pamphlet, or photograph depicting a child under 18 engaging in prohibited sexual acts.	Class B felony; 2d conviction—Life imprisonment.
		Illegal to deal in such materials; i.e., transporting, shipping or mailing, receiving for sale or selling; distribute or disseminate through shows.	Class C felony; 2d conviction, class B felony.

State and law	Approval	Provisions	Penalty
Title 24, ch. 16 (1977)		Regulates adult bookstores through licensing and commission; requires recordkeeping by distributors, wholesalers, or publishers which supply materials, and dates of receiving; subject to inspection on demand by police or commission.	$200, or imprisonment up to 6 mo.
Pending S 188 passed Senate S 4912.	Regulation of adult bookstores.	Illegal for bookstores to display, keep, transport, sell, or attempt to do so, any film, picture, recording, pamphlet, magazine or book depicting a child engaged in sexual acts.	$50 to $1,000 and imprisoned 1 mo to 1 year.
FLORIDA			
Ch. 77-103 S. 847. 014	Child pronography	Illegal to produce, conduct, direct, perform or participate in photograph, motion picture, exhibition, show, representation which depicts sexual conduct, excitement or sadomasochistic abuse involving child under 18; or to aid, abet, counsel, hire, or procure a minor.	2nd degree felony.
		Illegal to exhibit, or sell, lend, give, distribute, transmit or to offer to do so, or advertise; State attorney may obtain injunction in circuit court.	3d degree felony.
GEORGIA			
No child porn law, sec. 54-9903, 54-9904 (1878) alternatives: Child molestation, rape, incest, enticing child for indecent purposes.	Children in improper vocations.	Illegal to sell, apprentice, give away, let, or dispose of child under 12 for * * * any indecent, obscene, or immoral exhibition practice or purpose, or to use child for such.	Misdemeanor.
HAWAII			
No child porn law; SB. 1408, S.D. 1 not enacted (1977).	Amend pornography law.	Illegal to disseminate, produce, direct, participate or assist in pornographic material or performance which employs, uses, permits, persuades, induces, entices, coerces or contains child under 18 in sexual conduct.	Class B felony.
		Illegal to display on sign, billboard or stand visible from street or sidewalk, obscene material which contains minor.	Class C felony.
IDAHO			
No child porn law; alternatives:		Illegal to hire, employ or use child for.	Misdemeanor; 2d conviction—falony.
18-6607	Prohibits lewd conduct with child under 16.		Up to life imprisonment.
18-1514	Obscenity law		
ILLINOIS			
Ch. 38, par. 11-20a (1977)	Criminal code—Obscenity involving a minor.	Illegal to sell, deliver, publish, or exhibit obscene matter, or direct an obscene play, dance or performance, or perform an obscene act, or advertises obscene material with a prepubescent minor.	$25,000; 2d offense $50,000 and/or imprisonment without probation.
Ch. 38, par. 11-4 (1977)	Indecent liberties with a child.	Includes prohibition against photographing, videotaping, filming, or reproducing sexual conduct with child under 16, or soliciting or permitting a child undar 16 to do so; prohibits selling, distributing or possessing materials.	Class 1 felony.
INDIANA			
No child porn law; legislation expected in 1978.			
IOWA			
No child porn law			

State and law	Approval	Provisions	Penalty
KANSAS			
No child porn law; alternatives: KSA 1976 supp. 21-4301.	Obscenity law		
KENTUCKY			
Legislation expected 1978—No child porn law; alternatives:			
KRS 208.020	Causing child to become delinquent.	Forbids any person to employ, or consent to employment of child under 16 in any indecent or immoral occupation or practice.	$50 to $300 and/or 90d; 2d offenses are $100 to $500 and/or 1 yr.
KRS ch. 510	Sexual offenses and sexual abuse.	Differing degrees of rape and sodomy offenses, and subjecting child to sexual contract, depending on age of child.	Range of class A-D felony
KRS ch. 531 531.040	Obscenity law	Prohibits the use of minors to distribute obscene material, including preparation or assisting in preparation.	Class A misdemeanor; 2d offense is class D felony.
LOUISIANA			
RS 14:81.1 (1977)	Pornography involving juveniles.	Illegal to photograph, videotape, film or reproduce any act of sexual conduct involving child under 17; or to solicit or coerce child, or to sell, distribute or possess the same; possession of 3 or more items is prima facie evidence of intent to sell or distribute.	$10,000 fine and mandatory 2 to 10 yr imprisonment.
RS 14:106G (1977)	Obscenity	Penalties included for obscenity with or in the presence of a juvenile.	
MAINE			
No child porn law			
MARYLAND			
No child porn law; legislation expected in 1978—Alternative: Art. 27, sec. 35A.	Child abuse, including sexual abuse.	Prohibits any sexual molestation, or exploitation including but not limited to incest, rape, carnal knowledge, sodomy or unnatural or perverted sexual practices by parents or supervisors.	Felony; up to 15 yr.
MASSACHUSETTS			
No child porn law; S 1813 expected in 1977.	Child labor	Illegal to employ, procure use, cause, or encourage child under 18 to pose, or be exhibited in the nude or participate in an act depicting sexual conduct on book, magazine, pamphlet, motion picture, photograph, conforming amendments to obscenity law included.	$3,000 to $5,000 and/or 5 to 7 yr. Superior court has jurisdiction to enjoin dissemination of material.
Alternative: Ch. 149 sec. 104	Child participation in public exhibitions.		
MICHIGAN			
No child porn law; legislation expected in 1977:			
HB 4332-5381	Penal code—Child porn	Forbids parents of child less than 17 to encourage or entice child to perform in sexually explicit material; or any person to accost, entice, or solicit a child under 17 to perform in same.	Felony—1 to 4 yr.
		Prohibits producing, or finance sexually explicit visual material with child under 17.	3 to 10 yr.
		Penalizes taking part in filming, selling, distributing, wholesale.	1 to 4 yr.
		Selling or distributing retail	1 yr and/or $1,000 to $5,000.
S 380	Child abuse	Conforming language; authorizes county prosecuting attorney to take action.	
HB 4856	Child labor	Conforming language	

State and law	Approval	Provisions	Penalty
MINNESOTA			
MS 617.246 (1977)	Obscenity	Illegal to promote, employ, use, or permit child under 18 to engage in sexual performance to prepare an obscene work, film, photo, negative, slide, drawing, or visual representation depicting minor in potently offensive sexual conduct. Owner of business disseminating the materials liable.	Felony.
MISSISSIPPI			
No child porn law; legislation expected in 1978—Alternatives:			
Sec. 43-21-27	Child abuse	Includes sexual and psychological abuse.	
Sec. 97-5-5	Enticing a minor for immoral purposes.		
MISSOURI			
Sec. 568.060 effective Jan. 1	Criminal code; child porn.	Illegal to photograph or film a child under 17 engaging in a specified prohibited sexual act or permitting a child to do so.	Class D felony, $5,000 or double the profit and/or 2 to 5 yr.
MONTANA			
No child porn law			
NEBRASKA			
NEVADA			
No child porn law; alternatives:			
1977, SB 184	Child abuse	Stiffer penalties for child abuse (including sexual abuse).	
SB 412	Sexual assault	Stiffer penalties for sexual assault on child under 14.	
NEW HAMPSHIRE			
RSA 169:32 (supp) (1977)	Contributing to delinquency.	Renders parents, guardians or custodians guilty of class B felony for encouraging, aiding, causing, conniving or contributing to the use of a child under 18 in sexual conduct for pornographic purposes.	Class B felony.
RSA 650:2		Illegal to sell, deliver, provide obscene material, present or direct obscene performance, publish or exhibit obscene material, or sell or advertise obscene material if it involves child under 18.	Do.
NEW JERSEY			
No child porn law; 3 bills introduced in 1977—Alternatives:			
NJS 2A:96-2, 3	Criminal laws	Illegal to hire out or employ a child for an occupation involving immoral conduct; or to force or induce child to participate in act which would impair morals.	Misdemeanor.
NJS 2A:138-1; 2A:143-2, 2A:114-2.	Sexual conduct	Rape and carnal abuse; sodomy with children under 16; incestunus conduct between parent and child.	
NJS 34:2-21.57	Child labor laws	Prohibit minor's appearance in any exhibition dangerous to his or her morals.	
NJS 9:8.8, etc.	Child abuse		

State and law	Approval	Provisions	Penalty
NEW MEXICO			
No child porn law; legislation expected 1978—Alternatives:			
40A-6-3	Contributing to delinquency.	Commiting an act or neglecting duty, causing delinquency of child under 18.	4th degree felony.
40A-6-1	Child abuse law	Illegal to endanger child's life or health, or torture, or confine or punish cruelly.	Do.
NEW YORK			
A 3587-C (passed 1977) art. 263.	Child porn	Illegal to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, publish, distribute, exhibit or advertise an obscene sexual performance or sexual performance by child less than 16.	Class D felony.
NORTH CAROLINA			
No child porn law; 2 bills introduced 1977—Alternative: Ch. 14, sec. 190.	Criminal law; involving minors in sexually explicit materials.	Illegal to allow minor under 16 to participate in obscene literature or performance; also to disseminate obscene material to minors.	Misdemeanor.
NORTH DAKOTA			
Sec. 12.1-27.1-03	Obscenity law	Illegal to permit a minor to participate in a performance which is sexually obscene.	Class C felony.
OHIO			
S.B. 243 (enacted 1977):			
Sec. 2907.321	Obscenity	Prohibits creating, producing, publishing, exhibiting, advertising, selling, disseminating, creating, directing, producing, possessing or controlling an obscene performance or material that has minor participating or observing.	4th degree felony, 6 mo to 2 yr and/or $2,500. Subsequent convictions 3d degree felony of 1 to 10 yr and/or $5,000.
Sec. 2919.22	Endangering children	Prohibits anyone from enticing, permitting, encouraging, compelling, employing, or allowing child under 18 or a mentally or physically handicapped child under 21 to act, model, participate or be photographed for the production, presentation, dissemination or advertisement of obscene material or performance.	1st degree misdemeanor (6 mo and/or $1,000); subsequent offenses 4th degree felony.
OKLAHOMA			
Legislation expected in 1978—No child porn law; alternatives:			
Ch. 21, sec. 1121	Lewd or indecent acts	Illegal for male over 16 and female over 18 to propose unlawful sexual relations, to touch, to lure child under 14 to commit a crime against public decency.	Felony, 1 to 20 yr if the accused is 5 yr older than the victim.
Ch. 31A, sec. 856	Contributing to delinquency.	Delinquency definition includes exposing self, and participating in the preparation or manufacturing of obscene, indecent or lascivious photos, pictures, figures or objects.	Misdemeanor, 6 mo and/or $500; subsequent offense, felony, 3 yr and/or $3,000.
Ch. 39	Obscenity law	Lewdly exposing self or procuring, counseling or assisting others; or photograph or prepared, publish, sell, distribute, or exhibit any book, picture, or photo.	Felony; 30 d—10 yr and/or $100 to $5,000.

State and law	Approval	Provisions	Penalty
OREGON			
No child porn law—alternative:			
C. 163. 305	Sexual offenses	Crime of rape, sodomy, and sexual abuse degrees depending on age of victim; also contributing to minor's sexual delinquency.	Class A, B, and C felony; class A and C misdemeanor.
C. 167. 060–167. 095	Obscenity	General obscenity sanctions	Class A misdemeanor.
PENNSYLVANIA			
No child porn law (18 P.S. 5903 declared unconstitutional).	do	Included prohibition of hiring, employing, using or permitting minor child to do or assist any proscribed act.	
SB 717 passed Senate	do	Illegal to permit a child under 16 to engage in a specified prohibited sexual act, if the act is to be photographed or filmed; illegal to photograph or film; illegal to sell, or display a book magazine, pamphlet, slide, photo or film depicting child under 16 engaging in a specified prohibited sexual act.	2d degree felony.
RHODE ISLAND			
Sec. 11-9-1 (1977)	Children	Illegal to sell, distribute or permit child under 18 to be used in book, magazine, pamphlet, motion picture, photo depicting child under 18 engaged in a sexual act; publishing, selling, loaning or distributing the same also prohibited.	1 yr and/or $1,000 2d offense, 3 yr and/or $3,000, subsequent 5 yr and/or $5,000.
SOUTH CAROLINA			
No child porn law. H. 3075 introduced passed by House.	Child porn	Illegal to sell, offer for sale, advertise, market, or distribute obscene material with person under 18, or permits the child to do so.	Misdemeanor, 5 yr and/or $5,000.
SOUTH DAKOTA			
No legislation			
TENNESSEE			
Title 50, ch. 7 sec. 50-707 (1977)	Child labor law	Prohibits employment of minors as models to engage in sexual conduct to prepare a film, photograph, negative, slide, or motion picture.	1 to 3 yr; and/or $500
Ch. 405, Public Acts of 1977	Obscenity	Illegal to promote, employ, use or permit a minor to engage in modeling in sexual conduct to prepare a film, photograph, negative, slide, or motion picture; or sexual conduct; and illegal to produce, direct, manufacture, issue, sell, lend, mail, publish, or advertise any matter depicting a minor in obscene sexual conduct.	Felony; 3 to 21 yr and $10,000.
TEXAS			
Ch. 43, sec. 43.25 (1977)	Penal code	Illegal to sell, distribute, exhibit, or possess for such purposes any motion picture or photograph of a child under 17 engaged in sexual conduct.	3d degree felony; 2 to 10 yr and $5,000.
UTAH			
No child pron law; legislation expected in 1978—Alternatives.	Child abuse, indecent liberties.	May be interpreted to include sexual abuse.	
VERMONT			
No child pron law; legislation expected in 1978—Alternative: Obsenity law.			

State and Law	Approval	Provisions	Penalty
VIRGINIA			
No child porn law; legislation expected in 1978—Alternatives:			
Ch. 12.1	Child abuse	Includes sexual abuse of child under 18.	
Sec. 18.2-348	Criminal offenses	Illegal to procure for illicit sexual intercourse.	
Sec. 18.2-355		Prohibits parents or guardians from consenting to female child for prostitution or unlawful intercourse.	
Sec. 18.2-361		Crimes against nature, by force	Class 3 felony.
Sec. 18.2-366		Incest	Class 5 felony.
Sec. 18.2-370		Indecent liberties with children	Class 6 felony.
Sec. 18.2-372-379	Obscenity	Illegal to hire, employ, use or permit a minor to do anything that is an offense under the obscenity act.	Class 1 misdemeanor.
WASHINGTON			
Legislation, 1978; no child porn law—Alternatives:			
RCW ch. 9.68	Obscenity	Distribution of films or publications.	
RCW ch. 26.44	Child abuse	Includes sexual abuse	
RCW 9A.88.100	Indecent liberties		
RCW 9A.88.050	Prostitution		
RCW 9.79.200-.220	Statutory rape		
WEST VIRGINIA			
Sec. 61-8A-1 (1974)	Obscenity	Illegal to hire, employ or use child under 18 to depict or describe in an offensive manner specific sexual acts.	Misdemeanor; sentencing at court's discretion.
WISCONSIN			
Legislative action possible in September 1977: Assembly bill 819.	Child porn	Illegal to photograph, videotape, film, record the sounds or make reproductions of a minor engaged in specific sexual acts; or soliciting a minor for such purposes; or permitting minor; or to produce, perform in, profit from, promote, import, reproduce, sell, advertise, distribute any materials depicting a minor so engaged.	Possession of 3 or more items is prima facie evidence.
WYOMING			
No child porn law			

Mr. Conyers. Thank you very much, Assemblyman. You have done a very good job in providing the subcommittee with a sort of review of what is going on in other States. Your charts will be very helpful to us.

Do I get from your message that you are suggesting that we, at the Federal level, hold back or move carefully until we see exactly how the new statutes that are being enacted in many areas of the country actually operate in practice?

Mr. Maddy. I would say, Mr. Chairman, that trying to feel the pulse of the California Legislature, I would think that my colleagues would be asking that you do something about it on a nationwide basis.

Our biggest problem, of course, is attempting to find the producers. And admittedly we know in Los Angeles and San Diego, the other metropolitan areas of the State, we have a great deal of production going on.

But we also face the prospect that no matter what we do, it is very difficult in terms of bringing about any slowdown of this material if it comes in from out-of-State. And we have a law, of course, that is why we strengthened our law on obscenity, but we found in the hearings it was very very difficult to deal with the question of the first amendment and those kinds of publications that deal with just something slightly above nudity, something that does not fit the obscenity definition, that are flown into our State from other places.

Mr. CONYERS. Have you ever talked to investigator Lloyd Martin of the Los Angeles Police Department about the police side of the problem?

Mr. MADDY. Mr. Martin testified, I believe, before the Senate select committee. He did not testify before my committee in the assembly. Much of the material that was developed was developed in the Senate side, although we did produce a couple of the bills on our side.

Mr. CONYERS. Has this thought occurred to you, that perhaps some of the problem that we are attempting to address is not subject to legislation and statutory remedy?

In other words, what we are dealing with is a problem that moves into the social side of our existence in this civilization, and it is going to be very difficult for us to really pass laws, increase penalties, and think we are going to interrupt conduct that easily.

My unfortunate experience in Congress has been that an increase in penalties doesn't always get the desired or hoped-for result.

Mr. MADDY. I think, Mr. Chairman, what you have just related was a very strong argument made on the floor of the assembly during the time that I carried one of the Senate bills on child pornography. That argument was made, that we have some serious problems in society that are not going to be remedied by either a congressional committee or assembly committee, or national committee passing strict laws for the prohibition of this kind of material, because there is an audience for it, apparently, because it flourishes out there.

The only thing we can do, and of course my response to that as chairman of the Criminal Justice Committee was to do all I could do prevent the abuse of children that takes place obviously in the production of this material. It is deplorable, when you see the product that are coming forth and I think that is at this point from my standpoint in the role that I play in the California Legislature, was the best I could do.

But I agree with you we have some serious problems in society as to why this kind of material is sought after.

Mr. CONYERS. Mr. Ashbrook.

Mr. ASHBROOK. I have several questions, Mr. Chairman. Assemblyman, I guess the heart of our interest in this legislation is the evidence clearly shows there is a real problem of proof when an act occurs in one State and the material is distributed in another State.

In this case I suppose the act would be the filming, and then the printing and distributing would be done in another State.

Can you give me any indication of your experience in California of the degree to which this particular problem faces you, perplexes you, as a State legislator?

I guess that is the basis for national legislation, to handle this type of situation. But in this general area could you give us some comments as to what you have found in California on this particular situation?

I assume California is not necessarily the home of both the filming, printing, and distributing of all of this material.

Mr. Maddy. Unfortunately, we are playing a major role in both. It is regrettable. But we do find in California there is a great deal of the production of the material, but part of why I mentioned that I thought my colleagues and I share that view that it's desirable for congressional action is we face the problem that if we can shut them down, conceivably that material is still flowing in, because we find a large supply of material that is not necessarily on the book stands, but that is in the hands of people and is material that is coming in from out-of-State. We have had a statute for some time that carries penalties for the distribution or sending into California of material. But of course we can't reach across the border, we can merely get it when it comes into our State. Other than that, we urge some action, I think congressional action.

Mr. Ashbrook. I think we all recognize this is a very delicate area. Sitting here, or sitting where you are, the witnesses and their attorneys, we can say what we want, but we don't fool each other, we know it is a very difficult area of law. The great difficulty I see is almost everybody uniformly says we ought to in some way shield the child or prevent the abuse of the child, but at the same time many stand up and say well, we still have to go ahead and publish the material, we can't stop the activity that causes the problem.

In a constitutional sense, we recognize that as a difficult area—prior restraint, censorship, none of us want any of those things.

Do you think as a legislator that we can stop the activity in this particular area? You obviously have checked your precedents in California. How do you think we can stop the activity and prevent the abuse, inasmuch as the activity is wrapped, like it or not, in the first amendment?

Mr. Maddy. Our frustrations, Mr. Congressman, were wrapped up in just what you said. We can enact strong laws on the production of this material. Frankly, we can't get too many of the people that are producing it. The police departments in our various jurisdictions have not been successful in finding the producers of the material.

So in reality we enact strong laws in this area, but we are not going to catch many people. So it boils down to the distribution of the material. We can enact strong laws, we have, on the distribution of that material that is defined as obscene. But in the child pornography area, our frustrations come in trying to stop the distribution of that material that falls just below the obscene level; in other words, material we probably are not going to be successful in defining as obscene if we go to court. That is where the prosecutors are having great problems, the so-called Tiny Tots material that is really something more than nudity, but probably not obscene.

So that is why we are struggling in California with either taking on the Miller definition of obscene and/or trying to use some other concept of a special definition of obscenity, because the only place we can really have any effectiveness is on the newsstands; in other words, the distribution of it.

Then we run square into the first amendment problems.

Mr. **Ashbrook**. On that particular point, and I will close with this, because we have a number of witnesses today, but as far as the California situation is concerned, what is your general record of convictions and what is the general record on those convictions as far as appeals are concerned?

Mr. **Maddy**. There are two cases pending now in regard to the material that I just mentioned, the so-called something more than mere nudity and something less than what has in the past been clearly defined as an explicit sexual act engaged in by a minor.

Those cases are both up on appeal. In terms of prosecutions in general, we have not been successful. The prosecutors have felt that as long as we had the laws we had, which were misdemeanor laws, as long as we did not have any ability to, or they didn't have the ability to trace the material in some way, or go after the distributor in some fashion, with something other than an obscenity statute, they were not going to be successful, so they did not prosecute.

You can go on Sunset Boulevard in Los Angeles and some other areas of our State, and you see it flourishing in all of the bookstores.

Mr. **Ashbrook**. Thank you. Thank you, Mr. Chairman.

Mr. **Conyers**. Mr. Ertel.

Mr. **Ertel**. Thank you, Mr. Chairman. Mr. Maddy, I have listened to your testimony and I am concerned. It seems to me you are worried about discriminating between "obscenity" and "nudity".

Would it be helpful to the States—I note there are quite a few States that have no legislation—if we set up some sort of commission to try and formulate a statute or a definition which you could work with at the State level to determine where in fact this dividing line is, and to try to make sure it is constitutional?

Mr. **Maddy**. That would help us. I looked at H.R. 3913, and we didn't have much problem with the definitions of prohibited sexual acts, they ran from A through about H. When you get into any other sexual activity, or get to J, which says "nudity," if such nudity is to be depicted for the purpose of sexual stimulation or gratification, we start grappling with that.

We came up with obscene nudity, and sexual conduct as defined, in which we tried to say lewd and lascivious showing of sexual parts, all kinds of things.

So we would encourage, if you could, something that would give us a better definition.

Mr. **Ertel**. Would you suggest some sort of a study by some of the leading constitutional scholars, especially in the first amendment area, who would draw the guidelines they felt would meet the Supreme Court test?

Mr. **Maddy**. I think it would be helpful, because we frankly are not, notwithstanding a great deal of assistance by legal scholars in California, we are still as perplexed today as when we began the hearings this year. I am not sure an interim study will solve it. It is a matter of trying to come to grips with it, because we have a great deal of response and activity by our constituents who are asking us to respond to this problem.

If you don't do something, you are in trouble; if you do something that is unconstitutional, you are probably in more trouble, at least our committee always felt we wanted to be as constitutionally sound as we could.

Mr. **Ertel.** I note that you have quite a group of States which have no legislation, and of course you have the ones that have pending legislation.

Do you have any general idea why those States that have no legislation, who obviously aren't working on it, have not moved in this area at all?

Mr. **Maddy.** Based on our experience in California, I think if the public becomes aroused in those States, as they did in California, you will find that there will be legislators putting bills in like crazy.

As I said, we had nine this year, and that was because there was a serious move on the part of a great number of people in our State to make others aware of what was going on and to bring about some response from the legislature. The legislature that responded to the survey indicated that they felt that general lewd and lascivious conduct, the statutes that are on the books now, and other statutes they have dealing with children, probably covered the field. I don't think they have been hit yet with the flood of this material like we have. If they are, I can assure you the constituents, the folks will be writing them in a hurry.

Mr. **Ertel.** So I guess we can assume from your statement those who have no legislation pending probably haven't felt the problem?

Mr. **Maddy.** The distributors just haven't found them yet.

Mr. **Ertel.** One other question I was interested in. The chairman asked you about increased penalties. Would that be effective? Would you consider increased penalties for those who are producing, and selling these materials? If you have imposed increased penalties, won't they react in terms of making a business judgment or decision, and an increased penalty would have to be weighed in a judgment, as to whether or not the penalty is worth it, considering the profits they will make?

Mr. **Maddy.** Our feeling, our debates in our house were centered around the idea that those who were producing the material, those who were using children in the fashion we saw, either in the movies or magazines or other materials, ought to be hit as hard as they could be hit. We shared the view that not only a possible prison sentence, but a financial penalty, the $50,000, that was part of our penalty, was important, because we found it was a business practice.

We were not as concerned, or we felt that the only way we were going to stop it, of course, is at the distribution level, but we have a little bit more concern for the person who perhaps is at the bookstore. He is not producing it, he is distributing it, but again we tried to add some financial penalties, so they could take that into consideration as a business judgment. Because oftentimes it is, as you say, a pure business judgment, and I find in talking to some of those people they of course don't enjoy the material any more than the vast majority of the public.

Mr. **Ertel.** Thank you very much.

Mr. **Conyers.** Mr. Railsback.

Mr. **Railsback.** I kind of get the feeling that there is not a great emphasis on child pornography. I wonder what your experience is as far as the adequacy of State child exploitation laws generally?

In other words, we have had testimony that there have been areas in the country, and I think California was one of them, where there is child prostitution. What is your feeling about the adequacy of State laws generally on that?

Mr. Maddy. We found in California our laws were not, and that is why we added the provisions to the labor code, provisions that attempted to go at the question of exploitation of children, and abuse of children, because we felt they were not adequate. We went after parents. In part of our provisions we make the penalty applicable to those parents or others who have children under their care and custody and control. If they utilize the children, or allow their children to be used, they can be hit with the same penalty.

Mr. Railsback. Such as foster parents, maybe court-appointed foster parents?

Mr. Maddy. We find that in some degree. We made it so that anyone with the care, custody or control, our words were, any parent or guardian.

Mr. Railsback. Would your law extend to even camps, like say church camps, Boy Scout camps, other camps where the director may have control of the children? I am just curious.

Mr. Maddy. That would probably take some court test. but we said any parent or guardian. We left it at that. We would have to put them under some other provision in that case.

Mr. Railsback. The reason I asked the question is there has been some testimony, believe it or not, that there have been instances where people that would normally be regarded in a very favorable light as exercising, you know, very good care, have not always exercised it, and actually in some cases have abused children.

Let me ask you this: Those of us on the Federal level that want to do something constructive and meaningful are having a great deal of difficulty, as has been suggested, by reason of constitutional restrictions. I am wondering if as a legislator either one of you have any ideas where the Federal Government could be particularly helpful and still be very mindful of the constitutional constraints?

Mr. Maddy. Perhaps Mr. Ertel's suggestion that a task force that would attempt to give us some sound definition that would try to encompass some of the activities of children in this material would be helpful. What you could do, and how effective it would be with first amendment problems is to stem the tide of importation of material or exportation, in our case in California, because I know we are a producing State, would be helpful.

Mr. Railsback. Has it been proposed by your group or by any State legislative group that there be some kind of a model uniform child abuse and child pornography statute?

Mr. Maddy. I think what the National Conference of State Legislatures is doing is trying to compile this material, not only for your benefit, but I am sure this comparative chart will now be distributed to those other States that have taken such widely divergent approaches to the problem, and hopefully we will have some standard.

I think we all run into the difficulty of varying definitions of obscenity that exist in the States, and problems with the Supreme Court, as well as our own State supreme courts, so we have to deal within those confines.

Mr. Railsback. May I also just gratuitously suggest that we have had the head of the National District Attorneys Association before us to testify. As I recall, he was the district attorney from Michigan. And he also mentioned to us the great difficulty in prosecuting many of these cases. I think it would perhaps be helpful to you if you could work, or at least touch base with him. He had a lot of good ideas, too.

Just one other question. Is there any indication that organized crime is involved in child pornography or child abuse in California?

Mr. Maddy. Our testimony and the testimony that was presented to us did not indicate that they were playing a major role. We found in fact there were a lot of independents that were producing the material in California. Whether or not they are involved in the large sense with organized crime, we couldn't say. We could make no conclusion on that.

The attorney general of California did indicate that he felt there was that involvement.

Mr. Railsback. Thank you very much.

Mr. Conyers. I want to say to you, Assemblyman Maddy, that you have done a very important service, I think, in codifying the state of the States on this subject. We will be looking forward to your success in California. I don't know how long it is going to take before we can tell. I suppose it is really a matter of years before we will really have a judgment that will be worth anything. But you have been very helpful to the subcommittee.

Mr. Maddy. Thank you, Mr. Chairman.

Mr. Conyers. We appreciate your appearance.

The next witness is Larry Parrish, former U.S. Attorney General, from Memphis. Tenn.

Mr. Parrish was involved in the investigation and prosecution of major nationwide offenses involving violation of the Federal obscenity law. He is presently in private law practice, and remains a Special Assistant U.S. Attorney for the Department of Justice.

TESTIMONY OF LARRY E. PARRISH, FORMER ASSISTANT U.S. ATTORNEY, MEMPHIS, TENN.

Mr. Conyers. Mr. Parrish, we have 44 pages of your thoughtful preparation on this subject. It will be incorporated into the record. I don't know how to suggest that you pick out the high spots, because you cover, frankly, a large amount of very pertinent information.

But anyway, do the best you can.

Mr. Parrish. I think I have eliminated probably three-quarters of what is written here, if I may just highlight what is presented.

I am going to read it, because I think that will be faster than if I try to do it extemporaneously.

Mr. Chairman and other distinguished members of the Subcommittee on Crime of the House Committee on the Judiciary: I find it difficult to express fully the honor which I feel as a result of your invitation to appear before you to address one of the few subjects that I know a little about.

I hope that the privilege which you have extended me to share my thoughts with you will be time well spent for us both.

I share with you the pressure of having more things to be done than can possibly be accomplished in the time given. Thus, I will seek here to orally highlight the subjects which I have covered in my prepared materials, and which have been supplied to you beforehand.

First, I feel compelled to take a minute to set the record straight as to my personal philosophies.

In the first place, I am very much against censorship of all thoughts and ideas. I very earnestly feel that human sexuality is of divine inspiration and a thing necessary to the fulfillment of human personality.

Mr. **Conyers.** Pardon me, forgive me for interrupting you. I wanted to try to suggest that you could possibly pick out a few points. I have some questions that can probably get you right into the part of your material that would get us right on the dime.

Mr. **Parrish.** That is fine. I would rather proceed that way.

Mr. **Conyers.** I would appreciate that. Thank you very much. Your entire statement will be incorporated in the record.

[The prepared statement of Mr. Parrish follows:]

STATEMENT OF LARRY E. PARRISH

Mr. Chairman and other distinguished members of the Subcommittee on Crime of the House Committee on the Judiciary, I find it difficult to express fully the honor which I feel as a result of your invitation to appear before you to address one of the few subjects that I know a little about. I hope that the privilege which you have extended me to share my thoughts with you will be time well spent for us both. I share with you the pressure of having more things to be done than can possibly be accomplished in the time given. Thus, I will seek here to orally highlight the subjects which I have covered in my prepared materials and which have been supplied to you beforehand.

First, I feel compelled to take a minute to set the record straight as to my personal philosophies. I have found this necessary ever since a few years back when I was having an initial interview with an ex-convict who was about to assume a role in an undercover capacity as a part of an investigation which I was coordinating. I began to explain what would be expected of him and ask him certain questions. Very abruptly, he stopped me and said, "Mr. Parrish, ain't no need in us going no further lessen you understand where I'm coming from. Ain't nothin I say worth knowing unless you knows what makes me say it." The wisdom of that advice I have tried to retain. So you will know where "I'm coming from," let me share a few thoughts concerning my background.

In the first place, I am very much against censorship of all thoughts and ideas. That is true even of the thoughts and ideas which I think are abominable, deletrious, evil and sordid. Second, I am very pro-sexuality. I very earnestly feel that human sexuality is of divine inspiration and a thing necesary to the fulfillment of human personality. In addition, I am distressed that multiplied millions of persons in the United States are experiencing extreme difficulties emotionally and physically because of an ungodly over-restrictiveness concerning human sexuality.

I am a born-again Christian having practiced my faith for 25 years or more, and I am now and have continuously been for, at least, the past ten years an active participant in non-denominational evangelical churches. Nevertheless, I can say, as one who loves the church and the Christ of the church, that very sincere and well meaning congregations of believers throughout the history of the United States, and today, have and do fail to meet their responsibilities in imparting healthy and divine attitudes concerning human sexuality. I say this with regret, bu[illegible]s with these attitudes, I feel, must bear a large portion of the responsibility [illegible] the current wave of human degradation being spread abroad in the form of obscene materials.

False information about sexuality is just as devastating whether it comes from misguided Puritanism or malicious libertinism. But I am quite heartened by the upsurge of enlightment that I am perceiving across the nation in this area of most vital human concern.

Having said all of that, some explanation is in order as to why I feel that laws should be passed and enforced which severely restrict the proliferation of obscene materials in our Nation. My interest in this subject area was activated while I was living here in Washington employed as a trial attorney with the Federal Trade Commission in 1969. Three events occurred, one shortly after the other. One involved my wife and I when we attended an African safari-type movie in Arlington. Assembled with us seemed to be every cub scout, boy scout, brownie and girl scout in Arlington. Much to my surprise, the previews of the coming attraction included a scene vividly depicting a nude female and a nude male embraced in a most passionate way possible indicating the commencement of sexual foreplay. To say that I was heartsick, very saddened, personally offended and a little angry would be a fair description of my reaction.

Shortly after that, I was walking along the street in the District when I saw an erotic bookstore with a large sign stating that "everything in the store is approved by the Supreme Court." This I considered a very sad commentary on our judicial system.

Finally, I was in a bookstore at Eleventh and E one weekday morning purchasing a copy of the Memphis Commercial Appeal when I noticed a group of people toward the back of the store. Thinking someone was injured, I went back to lend assistance only to find adult human beings standing there gawking at pictures of other human beings engaged in sadomasochistic sexual abuse, a female with two male organs in her mouth while two other males engaged in anal and vaginal intercourse with her at the same time, and other such perverse conduct.

Until that time I did not know that human beings engaged in such conduct, much less, that it was openly being commercially distributed about midway between the White House and the Capitol. I have since found that what I observed there, though hardcore, certainly was not as depraved as many things now openly being distributed. However, after this succession of events in 1969, I said to myself that either there was no law at all prohibiting commercial dissemination of obscene materials, as I had always thought, or, if there was such a law, this was a very open and brazen flouting of it and no one seemed to be doing anything about it. At least according to the textbook, the only thing that should cause that is bribery. At any rate, I set out to educate myself as to the law.

Shortly after that, I moved to Memphis, became an Assistant U.S. Attorney and had very little to do with the obscenity question until mid-1972. At that time, I was confronted with flagrant and open violation of the Federal laws prohibiting interstate transportation of obscene material, it having been brought to my attention that there was a national distributor of such materials located in Memphis and disributing the materials throughout the United States from there. The evidence was very strong and indisputable. The question then arose, by what authority, even if it were our choice to do so, can a Federal prosecutor excuse the violation of Federal law when the violation is both flagrant and extensive with no mitigating factors. To excuse such a violation is to repeal, in effect, the law violated. It was our belief that our oath required us to enforce the laws, not repeal them, and that the integrity of our entire legal system was being tested.

Thus, the decision was made to proceed with prosecution and further investigation but only on the cornerstone that if the investigation did not produce evidence concerning the real profiteers and instigators of the violation, as opposed to the mere functionaries, we would not proceed further. Being thus instructed, I worked in concert with the FBI and in conjunction with Grand Juries over a period of 2 years conducting a nationwide investigation of facts relating to certain violations which had occurred in Memphis.

This was a decision locally made in Memphis and in no way influenced from outside Memphis. The Department of Justice in Washington was advised of indictments as they were returned, and they provided advice when requested. The results of the investigation were collected in Memphis, retained there and remain there even today. From November 1975 through December 1976, the most that can be said is that the Department of Justice in Washington did not obstruct the ongoing prosecutions in Memphis and that there were isolated pockets of support. However, there was some conduct which could have even been interpreted as obstructive.

The investigation produced twelve indictments and 60 defendants, more or less, with only three defendants being from Memphis. Many, many hours were spent in pretrial litigation and from November 1975 through April 1976, I spent 20 weeks of actual in-trial time in three U.S. District courtrooms trying the cases. Defense counsel came from outside Memphis more often than not and among several who defended are those who are the most widely recognized porno-defense lawyers.

I have cross-examined the best "experts" the defendants could produce. Finally, as I pursued the prosecution of these cases, I continued to expand my education on the subject matter in general. I read and talked with medical experts and social scientists from throughout the country. I have talked with prosecutors all over the country and telephonically been through several obscenity trials with various ones of them. In addition, I have traveled widely since August 1976 addressing the subject before many audiences of many philosophical inclinations, but primarily skeptics, and debated those who claim expertise on the subject. However, I have tried, as much as possible, to limit my appearances to professionals from one discipline or another and college and university audiences.

Now that you know "where I am coming from," I will tell you what I have to say. With no reservations intended, there is, in my opinion, no punishment too great nor too severe for a person who would abuse children by using them as sex objects and exploiting tender human life for material gain. To listen to a tape recording of a man saying that he felt the easiest way to get children for these purposes was to father them, like rats or frogs, causes me physical pain. In reading the testimony of one of your prior witnesses, I noticed the comment that the penalty on the pending bill was so severe that it would make it difficult to get convictions. This I do not agree with nor understand. There is no penalty severe enough on this earth.

Nevertheless, it is my sincere conviction that Federal legislation with its purpose being to prohibit the manufacture or transportation of such materials alone is a philosophical mistake and a legal nightmare. If there were not other adequate means to deal effectively and decisively with the problem, boht on the Federal level and the State level, my opinion may be different.

In the same way that I have said so many times that the only thing worse than no prosecutions at all are prosecutions which are halfhearted and lackadaisical, I can say that the only thing worse than no legislation is poor legislation. The results of both are failures. Such failures become misinterpreted in society. The misinterpretation is that the philosophical basis for either the prosecution or the legislation was not good. This simply is not true. What is true is that poor planning and poor draftsmanship caused the problem. However, once this erroneous attitude is set in the minds of persons marking up society, there is hardly anyway to erase its affects. The affects are that persons become totally frustrated and perceive of society as being incapable of dealing with the problem. When a problem is that obvious and society is that united on wanting something done about it, then society perceives its institutions as being powerless, our whole system of government is thereby weakened.

The second problem is that communicative materials may not be restricted in their movement in interstate commerce unless those materials are obscene. This is the result of balancing the Commerce Clause with the First Amendment of our Constitution. Thus, if the materials are obscene, there movement in interstate commerce is already prohibited. If the materials are not obscene, the restriction of their movement is constitutionally prohibited. Thus, efforts to legislate specifically against the movement of child porn in interstate commerce or extend the commerce power to its manufacture and possession is a futile effort. However, if that effort manifests itself in legislation, there is no way for it to be interpreted by the general public except that it stands as somewhat as an indorsement of other kinds of obscenity. Congress then finds itself in a complete state of contradiction. Even if that contradictory stance has no specifically discernable legal consequences, I can assure you that it will have far flung and deep-seated informal affects in the minds of prosecutors and others in a capacity to implement and enforce the federal law generally.

As I see it, Congress is now reacting to a public outcry which is not very explicit in its detail but very loud in its mandate which basically is "somebody do something quickly, please help!" This is an understandable cry and one which I join in. However, I add to that plea that whoever responds to it please do not try to cure my cancer with a bandaid and then tell me I am well. The result will be that I will continue to get more violently ill. I do believe that Congress has three very definite responsibilities in reacting, though long, long overdue, to the current situation gripping the Nation.

The first and easiest congressional response is to amend Title 18, United States Code, § 2423 as follows:

> Whoever knowingly *encourages*, persuades, induces, entices, or coerces any *person,* [woman or girl] who has not attained [her] *their* eighteenth birthday to go from one place to another by [common carrier] in interstate commerce or within the District of Columbia or any territory or possession of the United States, with *the* intent that [she be induced or coerced to engage in prostitution, debauchery or other immoral practice.] *such person be used, whether by consent or not, for sexual purposes, excluding the lawful use of one marriage partner by his/her spouse for the sexual expression by and between them,* shall be fined not more than $10,000 or imprisoned not [more] *less* than [ten] *three* years nor *more than twenty years, or both and the penalty shall double for each successive conviction.*

In its amended form it is my suggestion that Title 18, United States Code, § 2423 should read as follows:

> Coercion or Enticement of Minor—Whoever knowingly encourages, persuades, induces, entices, or coerces any person who has not attained their eighteenth birthday to go from one place to another in interstate commerce or within the District of Columbia or any territory or possession of the United States, with intent that such person be used, whether by consent or not, for sexual purposes excluding the lawful use of one marriage partner by his/her spouse for the sexual expression by and between them, shall be fined not more than $10,000 or imprisoned not less than three years nor more than twenty years and the penalty shall double for each successive conviction.

A statute such as this would be a proper Federal response to the increasing tendency of the persons responsible for the child porn to travel in interstate commerce with children who they so abused and solicit from around the country. It is my opinion that such conduct will increase widely. The amendment which I suggest, however, could nip that increase in the bud.

The second appropriate response of Congress would be to enact a law for the District of Columbia and appropriate necessary funds for use by the appropriate Federal agency in going into every State in the United States with such a law as a drafted piece of legislation making it a life time imprisonment offense for any person to use, aid or abet in the use, attempt to use, conspire to use, or be an accessory before or after the fact of the use of children to photograph them or their sexual organs either while engaging in sexual conduct or in poses designed to excite sexual thoughts on the part of pedophiliacs or persons with pedophiliac curiosities or interests. The Federal Government should undertake a conserted effort to encourage the passage of such legislation in every State. This would require a relatively small expenditure which could be spent one time and effectively remedy the problem of child porn or reduce it so that it would be controllable from a law enforcement standpoint.

The next thing which Congress desperately needs to do is refine, update and add sustenance to Federal obscenity laws. This brings me to that portion of my testimony dealing with my "experience with present law." I feel that I could safely say that my experience since 1972 has been as extensive as that of anyone in the United States. It is true that I do not estimate that I have spent more than approximately 15 percent of my time as a prosecutor dealing with obscenity issues while there are others who spend virtually all of their time dealing with enforcement of obscenity statutes, my experience has been more in-depth, intense and broader in scope. I have dealt with the issue both in the courtroom and out of the courtroom and in the context of national involvement. Because of my personality, I have approached the task before me in this regard with diligence. I have endeavored to bring originality to the problem. The knowledge I have acquired is not a result of superior intelligence but simply a matter of hard work in the context of a task that demanded my utmost. It is my firm conviction that the insights which I bring are unique in that they are the results of front-line in-court and sustained experience in an adversary context competing with the best legal defense in the country in this area. They are superior tacticians literally "fighting" for their position before a jury forced to resolve the issue before them. It is impossible to theoretically consider the issue, no matter how sincere or intelligent the theoretician is, and gain the knowledge, perspective or design that only pragmatics combined with theory can teach.

I come to you now as a mere citizen not as an advocate and representing no persons with a financially vested interest in the outcome of the debate. This separates me from obscenity defense lawyers who represent clients presently or hold themselves out as available to represent persons charged with criminal offenses relating to obscenity. Further, many such obscenity defense lawyers have a stake in validating professional advice which they have given clients concerning the distribution of obscene materials. Finally, for their tactics in defense to remain effective and saleable both to clients and potential clients and to judges and juries, they must conceal the true intent of some of their apparent argumentation. In addition, I am told on good authority, though I have no personal knowledge of it, that there are among the obscenity defense lawyers those who personally have financial investments in the obscenity which their ostensible clients peddle.

The current Federal obscenity laws are woefully inadequate and fall far short of what is constitutionally permissible regulation. They are better than nothing but not much more than that can be said for them. However, as inadequate as they are, they are fully sufficient to cover all obscenity using children as the sex objects. That is why there is absolutely no new legislation needed which concerns itself with nothing but child obscenity and why legislation specially dealing with that genre of obscene materials would be interpreted as a statement by Congress that the current law did not cover such materials. One would then be justified in asking, "If it does not cover that kind of material, what in the world does it cover?"

Just about the only thing worse than the current Federal obscenity laws which I can conceive of is the enactment of a law which comports with the obscenity provisions of Senate bill 1. The enactment of that part of Senate bill 1 would be a clear example of one moving from bad to much worse. That piece of legislation, if it became law, would cripple States in their ability to locally deal with the problems attendant to the distribution of obscene materials and leave Federal enforcement in the area in such a complete State of confused flux that it would be a simple matter of handing the sceptor of victory over to those whose livelihood depends on the distribution of all types of obscenity. I have specified the reasons why I feel the way I do about the Senate bill 1 provisions in a critique of that legislation which is a part of the materials supplied to the committee. Rather than take the large amount of time necessary here, I will simply submit that material to the committee for its consideration and submit to any questions which might be asked concerning it.

The reason for the current reaction of Congress concerning the upsurge in distribution of obscene materials using children as sex objects is based on a misperception of where the problem lies. That is, the problem is not that there is a lack of legislation which could be employed to prosecute those responsible for the distribution of such materials; rather, the problem is that the laws which are sufficient to meet that need are not effectively enforced. Thus, the passage of new laws dealing solely with the use of children in obscene materials misses the entire mark. What Congress wants and what the people of this Nation want and have every right to require is enforcement of the laws now on the books and that is not accomplished by the passage of an additional law. The passage of the pending bill is a most ineffective way to demand of Federal prosecutors that they adhere to their oath of office and enforce all of the laws irrespective of their philosophical inclinations as to whether or not the subject addressed by the law is one which should be so addressed. There are very effective ways to accomplish this end. As I will explain, I do feel there is a very great need for new, as opposed to additional, Federal laws dealing with obscenity and will be very precise in my recommendations along those lines. Further, I feel this is, at this precise juncture, the next thing in order to effectively deal with the problem.

However, there is one thing which Congress should have done years ago and, I suggest, had it been done the current near crisis situation could have been averted. General implementation of a congressional policy requiring what I am to suggest in the area of Federal criminal laws would enormously increase the effectiveness of law enforcement generally and have a substantial impact on the problems related to crime in society generally. Why did Congress not intiate an investigation long ago to acquire as to why there was so little effective enforcement of the Federal obscenity laws? This would have rooted out problems along the way. If congressional action was required from time to time it could have been taken with relatively little effort. If, on the other hand, prosecutorial ineptitude was the problem, those responsible for the conduct of prosecutions would have been held to account before society in a context and before a forum which would have required dealing with that ineptitude.

Few people stop to realize that a prosecutor has alloted to him power which, if abused, can effectively give him dictatorial power right in the midst of a democracy. Congress can pass all of the laws it wants all day long with as stern a mandate as it can muster but, if the prosecutor having taken an oath to enforce all laws decides that the particular law is one which he personally does not like or perhaps philosophically disagrees with, that prosecutor can effectively repeal the law very quitly with much less effort than it took Congress to pass it, quieting all protestation, if there are any, by rhetoric about "priorities" or other well sounding excuses. I implore Congress when it passes laws making certain conduct criminal to follow-up and assure that the law is being effectively enforced.

I personally believe in the principle of the less government the better and the fewer laws the better. However, when I see Congress reacting to problems attached to the fact that there is not proper and effective enforcement of laws by merely passing another law, I wonder if somebody has blinders on. At any rate, I feel very, very certain in my opinion that had prosecutors properly and effectively been true to their oath of office over the past 10 years, there would be no such thing as child porn. However, that is water over the dam now, and the current situation is one which demands immediate attention.

Though in private practice now, I come to you as a prosecutor in spirit. My sympathies still lie very much with prosecutors, and I am disposed to be very defensive of most prosecutors who have to meet the understandable accusation that they have dropped the ball in the area of obscenity enforcement.

It is true that there are some prosecutors in very influential places who I personally would consider to be openly dishonest and seem to have no compunction about their dishonesty as related to the enforcement of obscenity laws. These persons seem to feel comfortable with their selfperceived divinity which they consider gives them some supernatural right to pass philosophical judgment on whether legislatures should have enacted certain laws, and, if they, in their "wisdom", decide that the legislature should not have, they simply flout their raw power by refusing to make any overtures toward effective enforcement of it. This is an elitist approach to government which is truly inimical to our entire system. Of course, token and lackadaisical forays designed for nothing more than deception should never be mistaken for an honest effort.

But the vast majority of the prosecutors do not fall in this category. Many genuinely just do not know how to enforce obscenity laws recognizing very soon that it is a unique kind of prosecution problem which does not really fit in with the day to day run of the mill business at hand. Many sincerely do not have the financial support nor manpower, though this is given as a reason much more often than it is in fact the true cause. Many work under the thumb of judges who impose their power so as to negate the possibility of effective enforcement. Most have never studied the problems attendant to obscenity distribution; therefore, mistakenly assume that society is not suffering because of its proliferation. Many sincerely have misguided criteria for priority setting. Most have so little understanding of the law relating to obscenity that they feel uncomfortable dealing with it and, like the bar in general, most of what they do know comes more from media reporting than case book reading. This problem is particularly acute in view of the fact that the obscenity peddlers have financially supported a few lawyers around the country so there is now a porno defense bar which effectively specializes in this area of practice. When the everyday prosecutor finds himself in a courtroom with one of these professionals, both the prosecutor and the judge normally feel a sense of overpowering intimidation. Both the judge and the prosecutor soon find out that one cannot spend two or even two hundred hours in the library and brush up sufficiently to meet the apparent expertise of the porno-defense counsel. One way some prosecutors remedy this problem is to avoid the necessity for such persons to come into their courtroom again. Finally, many prosecutors are handicapped with laws which are so ineffectual, even if enforced to the maximum degree possible, that all effort expended is clearly and demonstrably wasted.

There is more sociology attached to the current state of ineffective prosecutions than anything else. I have analyzed this problem in the past but it takes some time to explain it. It becomes necessary to get involved with the effect of the Warren Court decisions and the Report of the United States Commission on Obscenity and Pornography among other things. Since this is of only historical significance now, I will not take the necessary time to analyze that situation. However, you can rest assured that my suggestions for dealing with the problem as it exists today take into account the reasons for the prevailing situation.

A new federal statute is needed. Part of the need is required because of the history of judicial precedence in the field of obscenity between 1956 and 1973. During that time, the United States Supreme Court allowed a situation to exist, in fact fostered it, which virtually gave to every judge near carte blanche authority to impose his personal philosophical inclinations as a part of judicial precedent in one fashion or another. To explain all of the ramifications of this is a lengthy process. However, the results can be explained quickly. That is, there is among case precedent "authoritative" support for just about anything any person wants to say about obscenity laws, definitions, procedures and a myriad of other matters. In 1973 and sporadically since, the Supreme Court has sought to definitively deal with the various issues so as to settle the controversies. However, the same statutes are being interpreted and questioned. The bottom line truth of the matter is that the statutes are so insufficient in and of themselves that the Supreme Court has effectively had to create judicial legislation.

In so doing, the Supreme Court has adopted new phraseology and given it constitutional significance. Additionally, the needs of society have been updated and are more discernable and discribable by new terms. The need for uniformity of application throughout the federal system is critical. Therefore, in this area, that is, obscenity restriction and prohibition, there is a unique need for statutory definitions of terms which might in any other area of law be left to other means.

These statutory definitions should reflect modern thought. Additionally, the definitions should be sufficient to meet the bag of tricks assiduously developed by the porno-defense lawyers. By bag of tricks I mean, those devices and tactics employed in an adversarial context designed to avert the inquiry so as to more nearly assure the acquittal of a defendant. These are not necessarily evil or dishonest, but they have as their purpose, and to often achieve, a miscarriage of justice rather than the implementation of justice. I can assure you from my personal experience, as well as, the experiences I have shared with numerous other prosecutors that these tricks are employed over and over and take prosecutors and judges by surprise. They find themselves the victims of the tricks only after it is too late to avoid their effect.

However, most prosecutors do not come back for a second trial. It is amazing how long these tricks have been employed with such success without, shall we say, the whistle being blown on them. You can be positive that I am blowing the whistle as loud and as far as I can but our system should legislatively react to the situation rather than expect the feeble efforts of one or two persons to meet the entire societal need. The only way these tactics can be successful is for the statutes to remain ambiguous enough to allow them. These gimmicks are discussed in detail in the Memorandum of Justification which I have submitted with the proposed statutory scheme which I suggest to the Committee.

Perhaps the most critical need for definition is the objective listing of specific types of hardcore sexual conduct with legislatively is recognized as "patently offensive." Any adequate statutory attempt in this area must supply objectivity, and that means complete objectivity, to this prong of the obscenity tests. Misuse of the word "way" in connection with the phrase "patently offensive" is the common error of recent legislative efforts. Because a representation may be of conduct legislatively declared to be patently offensive does not mean that representations of that conduct are obscene. For such to be the case, the representations must meet the prurience and serious value tests, thereby, making those representations obscene in the "way" they are represented.

On the other hand, representations of conduct other than that which is legislatively declared to be "patently offensive" could never be obscene under any circumstances no matter how openly it appealed to prurience or blatantly it lacked any value. Therefore, every living human being bound to give obedience to the statute would know definitively in advance whether or not the depiction in question was one subject to even being questioned and, if it were, would know in advance that he was taking the risk that he must concern himself with the other two criteria. Such certainty is legislatively required. Senate Bill One does not supply it. This entire matter is discussed in much more detail in the Memorandum of Justification which I have submitted along with the proposed statute.

The whole concept of prurience must be considered in terms of modern day enlightenment. The trick of the porno-defense lawyers in connection with this concept is to find some outlandish "expert" to testify that any interest which an average person might have concerning sexual matters is by the nature of the case a non-prurient interest. This is pure, unadulterated nonsense. However, when first confronted with it in court it takes awhile to respond. Sometimes, it requires time beyond the ensuing acquittal. I would particularly invite the Committee members to give attention to Addendum I to the Memorandum of Justification which is a rather lengthy treatment of the psycho-legal concept of prurience.

Other matters which must be addressed by adequate legislation involve the "appeal v. arousal" debate; the "average v. unaverage" controversy; the "standards v. habits" dispute; the "person v. adult" argument; the "acceptance v. toleration" matter; various jury voir dire tactics; the "deviant" group issue; the geographical v. non-geographical "community" test; the sham v. dominant theme concern.

Obviously, it should be required that every United States District Court substantively give exactly the same jury instructions defining "serious value" and "prurience." Under the present circumstances similarities in instruction seem to be by coincidence rather than design. Additionally, the scienter dispute needs to be legislatively settled.

Also, there is the continuing courtroom battle surrounding whether or not the offense is a *malum prohibitum* or a *malum in se* offense. After many, many hours of research and writing, one can easily demonstrate that the offense is, and should be, a *malum prohibitum* offense and treated as such in dealing with the non-scienter intent issue. However, most prosecutors are not going to have time to do the necessary research and some are going to be incapable of it. It is nonsense to expect that there should be a need to redo this research each time a case is brought. This is especially so when it would be so simple to settle the matter legislatively.

Other matters of concern are more simplistic but nonpredictable unless one has been in the trenches of the courtroom. For instance,

I once spent a good part of an hour in an argument in court as to where the female genital begins and where it ends. This was in the midst of the testimony of a defense "expert" who had testified that a spread eagle photograph of a female did not depict her genital. Medically and anatomically this was a matter subject to some debate. The reason for the controversy is the vagueness of the word "genital" when used in reference to a female. The entire matter can be legislatively remedied by using the phrase "external and internal genitalia" instead of merely the word "genital."

Believe me, no person except an ingenius porno-defense lawyer would be able to predict that the word "genital" was vague enough to raise such a dispute in court. Thus, I have never seen any law take this possibility into account.

However, if that dispute had arisen in the court of one of the few judges in the country, who are so philosophically opposed to obscenity legislation that they have little hesitancy in seizing opportunities to quash prosecutions, would have seized this chance to throw the prosecution out of court. I have dealt with all of these needs in the proposed statute and the Memorandum of Justification explaining it.

Another essential need is that penalties be attached to violation of the statute which will make it an effective deterrent. This I have recommended in detail in what I have submitted. The penalty provisions are designed to make it a financially imprudent for one to violate the statute.

Often defendants claim that only three to five percent of their business is in such prohibited materials. Under what I have suggested, 100 percent of their gross intake would be in jeopardy even if only one percent of their business was in obscene material. Believe me, such would not be the case. For others, nothing short of incarceration will deter them. But, just as surely, extended incarceration will positively deter them. The penalty provisions which I recommend are unique except as related to organized crime statutes. Further, it would take more than the normal effort to implement them. Additionally, mandatory periods of incarceration are required. However, these periods are very short for first offenders, that is, six months, but there is no excuse which can be given for repeat offences and the period of incarceration materially increases. This is just a way of saying that society is very serious about this matter.

It is my earnest prediction that the moment what I have proposed became law, the problem would reduce itself by 75 percent. The remaining 25 percent could effectively be dealth with by law enforcement. In very short order, no more than one year, obscent materials would disappear from interstate commerce except in a very underground and clandestine context being done by the most criminally inclined. Law enforcement can deal with that kind of problem.

Severe penalty provisions are essential. No matter how sound the legislation, if it does not contain markedly severe penalties for violators the problem with proliferation of obscenity will continue to grow and grow and grow. The presence of the statute will just make law enforcement problems and segregate the market for those with no compunction about the moral implications of violating the law.

The federal statute should specify in detail seizure provisions, forfeiture and contraband declarations. Also, post-seizure adversary hearings should be provided for in their detail. Finally, children should be protected from exposure to non-obscene sexually explicit materials by a separate provision dealing exclusively with that matter. Parental control over this matter should not be disturbed. What I have proposed does all of this.

Finally, what I have proposed does not in any way regulate non-commercial communicative exchange between privately consenting adults through the medium of obscenity. The proposal deals only with commercial exchange through the mode, medium or means of obscenity. The only other thing substantively prohibited is the use of interstate commerce to distribute to children non-obscene sexually explicit material. However, the term "sexually explicit" is statutorily defined.

The passage of the statute which I have proposed, I will guarantee, will so reduce the problem of using children as sex objects to produce obscene materials that it will no longer be a matter of national concern and effective local enforcement response response will reduce the manufacturing problem to the lowest level humanly possible. In addition, the touted 400 separate beastiality films will be eliminated from commerce along with the sadomasochistic, those depicting coprophilia (defecation on the person of another for sexual gratification), those showing urolagnia (urination on sexual partners for sexual gratification purposes), those showing group orgies, homosexual abuses and all manner of obscene representation.

However, what I have proposed will not eliminate erotica nor sexually explicit representations. What most people fail to recognize, usually out of benign ignorance, is that the Supreme Court has drawn the line on what kinds of representations can be declared obscene at a level which allows for the continued distribution of materials which would be highly offensive *personally* to most persons in society. Except for the ability to prohibit the conduct as a distribution to a child, every billboard in Washington could be covered with nudes of different sexes with full genitals showing and no law under any circumstances constitutionally could declare the representations obscene. Non-lewd depictions of genitals are absolutely protected by the Constitution. Thus, 100 percent of all of the legislators in the United States with 100 percent unanimity on the part of 100 percent of the population could not by any means enact any constitutional law under which the film, "Carnal Knowledge", could be declared obscene. *Personally*, I find that film very offensive, think it is an abomination, a disgrace and resent its presence and those who stooped so low to produce it. However, my personal opinion about that film is a total and absolute irrelevancy as to whether it is or is not obscene and any prosecutor who brought charges against persons responsible for its distribution is demonstrating an ignorance of the law which will not prevail.

Those who have traditionally taken a liberal view on this issue seem to always breathe a sigh of relief when confronted with this truth. However, most of them have never even considered the fact. After an interview by a television newsman with one of the three major networks a few months back, I had a private conversation with this person. His comment to me was, "You know, Larry, most of us in journalism react to this issue with a straight knee-jerk." For one who has been trained and totally saturated with nonsensical emotionalism concerning "censorship" that is a real insight.

Another experience which I had a few months ago in New York involved a rather lengthy conversation with a person who has been a very active member of the ACLU all of her adult life. This person is an academician and describes herself as very liberal. After the conversation, this person handed me a handwritten note upon which she had stated that I could return to Tennessee with the satisfaction of having opened the eyes of one person who had previously been blinded on the subject. She referred to herself as a "convert." However, it was necessary for her to hand me this note privately because if her friends who were also with us knew that she had done such a thing, she would be labeled a traitor by them.

However, most of the time which I have spent discussing this issue out of the courtroom has been with persons who describe themselves as very liberal and resent the fact of obscenity statutes. I can report from firsthand knowledge that it is no longer as intellectually posh as it once was to be against restriction of obscenity. A couple of years ago any upstanding liberal would brand anyone who was for such restriction as a non-intellectual, redneck or any other derogatory term known to him. Today, such is not the case. To be certain, there are still the Brendan Gills and others, who probably make up the majority among the outspoken liberals, who assume a very elitist attitude toward government and the governed and still express those terms and have those attitudes. But the ranks have broken and more freedom than has ever existed before on this issue is rampant among the liberals.

The comment has been made that control of obscenity is a local problem which should be dealt with by state and local governments while the federal government should withdraw completely. I am sure that whoever said that was sincere and well-meaning. I am equally sure that they did not think through the implications of such a policy. Personally, I agree that the brunt of the law enforcement effort both should be borne by the states and can be most effectively carried by the states. What is more, I feel that the constituency in each state should be given the ability, through its legislative process, to declare that there will be no resriction on any kind of communication nor communicative conduct be it obscene or not. All of this is impossible if federal laws are withdrawn. That is like jerking the rug out from under those who stand on it.

If a person or corporation can locate outside of a state and from that distant location pump materials into the state, such a person is effectively isolated from control by the state into which such materials are pumped. Finding a "safe" distant state will always be possible. Could anyone imagine Governor Jerry Brown agreeing to extradict a person from California to Connecticut for an obscenity violation? However, even if he would, why should the state of Connecticut have to go to such extremes?

The best states would be able to do would be to prosecute low level functionaries within their state or to make it a serious crime to possess or commercially receive obscene materials. Neither of these are appealing prosecutive targets and would present so many mitigating circumstances to severe penalty that no effective deterrence could be realized by their prosecution. Further, as to the possessors of the material, so long as they retained it within their own homes after receipt, they would be protected by their constitutional privilege to possess it for their own use within their homes.

In short, the federal prohibitions against interstate transportation of obscene materials are an essential supplement to all effective local law enforcement. When Uncle Sam drops the ball, as recent history indicates, the rest of society is nearly immobilized in its ability to deal with the problem.

With modern day technology, if any state chooses to withdraw all restrictions of all kind on communicative exchange through the medium of obscenity, the materials can be produced and distributed within any state in the union. There is no state so backward in technological advance that this is not possible. In this fashion, each state can effectively set its own constitutional standards independent of the standards of any other state. However, no state will be given this opportunity if the federal government opens up the channels of interstate commerce giving persons the means and access to foist their standards from outside that state on the inhabitants of the state in question. Thus, for the states to be enabled to control obscenity within their boundaries, it is essential that the federal government close down the channels of interstate commerce for the distribution of obscene materials.

Thus, it is my considered opinion that it is a serious mistake for Congress to enact any legislation designed solely to control what has come to be known as child porn. On the other hand, I feel that it is essential that Congress enact legislation dealing generally with the problem of distribution of obscene materials. What I have submitted to the Committee today, I earnestly feel will solve the problem of the proliferation of child porn, as well as, the equally deleterious problems with obscenity generally. I feel that the passage of the legislation which I have suggested will be a breath of new air to federal prosecutors who, though perhaps innocently, must assume the responsibility for the present state of affairs.

This new statute, I feel certain, will *demand* respect from the habitual violators. It will be, for the most part, a self-enforcing statute. By that I mean that very few persons will toy around with it. My estimate is that 75 percent of the current violations would cease immediately upon passage of the statute. Thereafter, very little actual prosecutive time would need to be expended to make certain the point that society is serious and that the law will not tolerate violation. Once this is done, and it could be accomplished well within a year, it is my prediction that the whole problem, as we know it today, will become swiftly a part of history passed.

Now because I know the thoughts are traversing through the minds of some of you and probably will be expressed by others, I must address some of the objections which probably will be made to what I suggest. The first will probably be that there is not sufficient time to overhaul the federal obscenity laws. This is premised on two underlying beliefs. One is that immediate legislative response is demanded by the current child porn problem. The second is that there would be such a battle waged in Congress over the statutory revisions necessary to accomplish what is needed with some Congressman employing every delaying tactic known to exist to stop such an effort. Thus, a year or more could pass while so many children would have their lives ruined forever awaiting the solution. Both of these are legitimate concerns. Of course, some of the problem could be relieved by implementing the suggestion which I made concerning passage of a law in the District of Columbia and appropriation of necessary monies to encourage passage of a similar law in each of the states.

Though the concerns are legitimate, it is my belief that they are exaggerated in the minds of some persons who will speak them. I do not believe that any truly effective and intelligent approach to the need and effect of federal obscenity legislation has been ever before undertaken in Congress. The battles which apparently raged over the Senate Bill One provisions and the compromise which resulted, which compromise is worse than nothing, to my knowledge never addressed the issue on a plane which could have added intelligence to the debate. I suggest that the proper approach would not be met with nearly the resistance one might expect.

Here again, to take the time now necessary to explain in detail just how this approach should be made would be too time consuming. However, I direct the attention of the Committee members to Addendum III of the Memorandum of Justification submitted with the proposed statute. A few brief observations and illustrations, however, may give you the flavor of my thoughts along these lines.

Let me go back for a minute to the experience which I related concerning the long-time ACLU member who slipped me the nite. What she does not realize is that others in the group, equally as liberal and equally known for their scholarship and intellectualism, had private conversations with me revealing very much the same thoughts as she. The ironic part is that these people were somewhat concerned that their colleagues might know that they had these thoughts.

You see, among liberals of this vintage, though they proclaim academic freedom as a virtue next to godliness, have been taught to believe that only intellectually deficient persons, bigots, hypocrites, totalitarians and "censors" could ever be for the restriction of any kind of communication. They have been taught that the First Amendment is totally absolute. The problem is that very few of them, I might say only the dishonest among them, have ever questioned what they have been taught or investigated the logical underpinnings upon which the teachings rested. Further, they are so totally, even if benignly, ignorant of what the law in fact is on the subject that they assume the worst kind of thoughts they can conjure up in their mind about "censorship" and base conclusions as if those assumptions were an accurate statement of the law. I think particularly of an article authored by a person named Willard Gaylin which appeared on Page C1 of the "Washington Post," Sunday, February 20, 1977. Mr. Gaylin was represented to be a professor of psychiatry and law at Columbia University Law School and president of The Hastings Center of the Institute of Society, Ethics and the Life Sciences. One would expect such a person to demonstrate intellectual astuteness.

However, if he really believes all of the things that he wrote in that 2500 word article, he is so misguided that he evokes pity from me.

Notice I said "pity" not anger. I, though conservative myself, join most liberals having a distaste for ranting and raving or anything remotely close thereto. Even if I basically agree with the one doing the ranting and raving, I usually walk away in disgust. What most liberals hear in defense of obscenity restriction is delivered in that context from persons for whom they have no respect. To expect them to be persuaded by such persons or argumentation and reject, no matter how unsupportable, that which they have previously been taught and absorbed is unfair. A person must get in the shoes and inside the skin of the liberal and try to empathasize with his feelings in order to know how to convince him. To try to do it by raw political power and the sheer force of votes is the wrong approach and gives the liberal a nauseous feeling of capitulating for expediency. Some few of them totally reject this approach and come out fighting. If I shared their erroneous convictions about the subject mater, I would join them.

Why I say "pity" is because I know that these persons sincerely believe what they have been told and what they have chosen to adopt as truth. The fact that it is not true is totally immaterial to the sincerity of their belief and the vigor with which they feel righteously justified in that belief. I am reminded of my feelings when I was a small child being put to bed in a dark room. I was totally convinced that there was a bear in that room. I did not want to believe that there was a bear in that room, but I could not help it because all of the indications which I saw and the circumstances which appeared valid to me indicated that the bear was there. The fact that my parents tried to reassure me that there was no bear was of only temporary solice.

The truth of the matter is that there was no bear there which I needed to fear. However, my sincere and erroneous belief to the contrary caused me to react. Quite frankly, I cried and probably would have done more if the situation had demanded it. That is exactly the position of the sincere liberal, be he or she in Congress, in the classroom or on the street.

Had my parents reacted to my sincerely misconceived but earnest belief in the wrong way, I would have been severely damaged and my reaction could have become quite hostile or violent. My parents had the power just to lock the door and leave me with my fears. They could have sought to quiet my crying by a good solid blow with the baseball bat. They could have mocked me and called me dishonest and a conniver. These would have all been wrong and damaging reactions by my parents although they were totally right—there was no bear in the room. However, these reactions are analogous to the way in which the liberal on the issue of obscenity is approached by those who have the truth.

What my parents did was first to recognize that I was very sincere and that my reactions were very genuine based on my perception of the facts available to me. They then turned on the light, and we conducted a very thorough investigation of the room and the accesses to the room. We considered the possibilities of how a bear might possibly get to the room. We considered the logic behind my conclusions as well as the facts which had to support them. Of course, I had never really done that. One cardinal mistake that is often made is that the liberals who speak their positions on the obscenity issue have already gone through such an analysis concerning their conclusions. The fact of the matter is that they have not. They are mimmicking and pantomiming. Of course, they cannot admit that, but you can rest assured that it is true.

Therefore, it is essential that the same approach my parents used with me concerning my bear be used by society to help the liberals discover the non-existence of their bear. The simplest rule of thumb in doing this is to take every foundational premise which they mimmick as their governing principal and test it. Its supreme test is to take it to its logical conclusion. If it is a good sound principal, it can be lifted out of its application to obscenity and applied to other areas equally as well with little or no modification.

This can be done with the "consenting adult" argument. If it is true that consenting adults should be allowed to engage in whatever conduct they choose as between themselves, then this should be made a governing principal applicable to all law. The same is true of their First Amendment "absolutism". No person is a First Amendment absolutist who is not also an anarchist. Of course, those who claim to support the idea of First Amendment absolutism do not realize this because they have never come to grips with it. Other of their cornerstones are equally vulnerable.

However, their entire argument rests on the false assumption that obscenity and its proliferation has a negative effect neither on society generally nor individuals in society. They base this conclusion, usually, on the one assertion that the United States Commission on Obscenity and Pornography found thus. This simply is not true. Challenge them on how many have actually read all of the technical reports of the Obscenity Commission and feel they understand them or even who among them have read the entire report of the Obscenity Commission or its minority report. You will find that very, very, very few have and many who will tell you they have are simply lying. Most are merely mimmicking what others have told them about the findings of the Obscenity Commission.

However, for those who have studied it and feel intellectually content with *their* conclusion that the Obscenity Commission found a basis for the "no-harm" theory, be prepared to consider the report and the technical reports bit by bit and ask them if they would ascribed such certainty to that particular research if it addressed any other subject.

One final response to what I have heard repeated several times. That is, that Congress should be concerned with conduct which is the most proximate direct cause of the specific harm in question. This has been in connection with the legislation now under consideration by this Committee. The thought is that persons should be punished if they abuse children in the ways depicted in child porn, but that laws should not be made which prohibit persons from engaging in conduct which might so effect a child.

Again, if this is a good principal it should be applied across the board to all laws. Not a single one of the persons who have spoken that, I suggest, would be willing to so apply the principal which has to underly their assertion. If it were applied, there could be no federal gun laws. Guns, even sawed off shotguns, have the possibility for a positive affect if used properly. Therefore, to make it a crime punishable by ten years imprisonment to possess a sawed off shotgun irrespective of whether the possessor knows that there is a law prohibiting its possession or that the gun barrel is 17" rather than his honest belief that the gun was 18".

As Justice William O. Douglas said in the opinion he authored for the Supreme Court in *United States* v. *Freed*, 401 U.S. 601, 607 (1971), where the public health, safety and welfare is involved the possessor of such an instrument, rather than the public must take the risk. Mr. Justice Douglas relied on the prior Supreme Court decision of *United States* v. *Balint*, 258 U.S. 250, 254 (1922), dealing with narcotics, as authority for this proposition. This exact same principal of law has been reiterated by the Supreme Court in the context of an obscenity prosecution. *Hamling* v. *United States*, 418 U.S. 87, 124 (1974) quoting from *United States* v. *Wurzbach*, 280 U.S. 396, 399 (1930).

The fact of the matter is that, if engaging in certain conduct or possessing certain items have with them a sufficient potential for harm, that potential is sufficient reason to legislate against the conduct or the object in question. This has always been the law. I daresay that those who have suggested the approach I referred to do not want to change that fundamental principal of law. If they do, however, the only time the possession of guns could be punished is after they had been used to shoot someone.

This argument is similar to the one that is often made which holds that legislators should not be allowed to legislate unless they have "indisputable" and "empirical" evidence that failure to legislate will result in an "objectively demonstrable harm." It is often said that no such evidence was available upon which a legislative decision to restrict obscenity could be based; therefore, the legislation was unconstitutional. Again, if that is a good principal, it must be applied to all law. The pragmatic truth is that there is no subject upon which there is indisputable proof. If legislature were held to that standard, with no discretion to weigh and evaluate what proof there is, we would quickly have "advanced"—back to anarchy.

Again, thank you for your invitation to appear before this honorable committee. If there are questions, and time, I will do my best to answer.

Respectfully submitted,

LARRY E. PARRISH.

Mr. CONYERS. In your very excellent statement you say that the Federal Government should expend funds to encourage uniform State laws prohibiting the use of children in sexual photographs.

Do you believe that in view of the fact that we have about 26 newly enacted State statutes that we may be moving toward stiffer prosecution, and also increased penalties?

Mr. **Parrish.** I still believe that the Federal Government should play a role in providing guidance to all of the States. I think it is encouraging that some of the States, 26 or so that you referred to, have made moves along this line. But a uniform law that has been encouraged by the Federal Government, I think would demand more respect than one that has been the product of the various legislature around the country.

Mr. **Conyers.** In other words, we don't need to slow down here, to wait and see what the several States are going to do in this area?

Mr. **Parrish.** I think that would be a mistake.

Mr. **Conyers.** On the general question of enforcement, you have had an opportunity to gain a great deal of experience in this, is it possible for us to have an effective Federal enforcement?

After all, the major cause for which you are noted was almost unique in being so alone. I mean there have been, as I recollect, no major Federal prosecutions since yours. Does this suggest a problem at the Federal level, and how do you perceive it?

Mr. **Parrish.** I think it suggests a problem at the prosecutors' level federally. There have been Federal prosecutions, and all Federal prosecutions that I know about have resulted in convictions. In the cases in Memphis we tried to be innovative, and we stated the offense in a way different than it had ever been stated before. And we prosecuted along those lines.

Now I know many prosecutors who are anxious to adopt that means of prosecution, but they want to wait and see what the courts are going to do about it.

Generally, the allegation was made in the indictments in Memphis that it was a conspiracy, alleged to be, to distribute throughout the United States, without the traditional language of the conspiracy to distribute from city A to city B. Legally speaking, that makes a large amount of difference.

Mr. **Conyers.** Well, in the Reems case that you prosecuted, was the prosecution deliberately brought in the jurisdiction in which you are a U.S. attorney because it would facilitate the prosecution, or is that an unfair statement? I don't mean to put you on the defensive.

Mr. **Parrish.** No; that is a commonly held belief. But I can say positively that there is no substance to it. I can see why persons may reach that conclusion. But there is no factual basis to it at all.

There was no coordination from the national level; it was a decision locally made in Memphis by the grand jury in Memphis, and there is just no substance to it.

Mr. **Conyers.** Do you think the same result could have easily occurred in New York or Los Angeles?

Mr. **Parrish.** Or San Francisco, yes, sir, I do. I think the difference in the localities is a difference in opinion about what should be allowed. If juries will follow the instructions, I think the same result would have pertained, and I think California is particularly known for producing good juries who have the mental capability of following the judge's instructions, even though they may not like them.

Mr. Conyers. Do you think increased sentences would be a deterrent? That seems to be a move that almost all of the legislation we are reviewing contains. I say that in the backdrop of something that is obvious to all of us, that the United States has, generally speaking, of all of the industrial societies, the highest penalties, criminal penalties of any country.

Mr. Parrish. I think increased penalties are essential, and addressing the situation concerning the United States as compared with other industrial countries, I think the penalties in the United States are just borderline penalties, and therefore you can't really tell the effect of what a genuinely severe penalty would be. Though our penalties are stronger than perhaps Britain's, they are not strong enough to really feel the significance of the deterrent-type penalty.

Mr. Conyers. Then you are a deterrence man, as the saying goes?

Mr. Parrish. Yes, sir.

Mr. Conyers. But yet you have reservations about H.R. 3913?

Mr. Parrish. Yes, sir, I do.

Mr. Conyers. They are not easy, there are no easy penalties laying around.

Mr. Parrish. No. My reservations about that bill are not because of the penalty provisions of it, but because of other aspects of it.

Mr. Conyers. Would you care to elaborate on that?

Mr. Parrish. Yes. I just generally think it is an unwise thing for there to be Federal legislation which singles out what is known as child pornography and seek to legislate against child pornography.

I think the problem lies in that there is not a sufficient—yet it is constitutional—but not a sufficient Federal statute dealing with obscenity generally.

I think even as insufficient as the current Federal statute is, it certainly is adequate to deal with child pornography.

Someone asked me earlier if the laws are so insufficient, how did you have the success you had? Basically my answer to that is that it made what should have been a 2-week trial into a 9-week trial.

It is hard to work with the Federal statute, and it is inadequate from that standpoint. But it is workable if you are willing to work hard enough.

Mr. Conyers. Thank you very much. Mr. Ashbrook.

Mr. Ashbrook. Thank you, Mr. Chairman. I have read your testimony, and I really find it very helpful, particularly your comments on Senate Bill No. 1, the proposal you have on page 11, which I would like to ask you a couple of questions about later.

First of all, I am interested, you indicate, and it is probably correct, that we would be better off not having any legislation at all on the books, rather than piecemeal and inappropriate legislation.

As a prosecutor in one jurisdiction, can you tell me if there is any general policy that was handed down during the time you were a prosecuting attorney, any general policy from the Justice Department, either to proceed or not to proceed in cases of this type?

Mr. Parrish. There was never really any policy that could be perceived as such. By that I mean there was early on, when I became an assistant in 1969, there were statements that came from the White House, which tended to indicate that the White House was in favor of enforcement of the statutes, on White House stationery, and this was circulated to all U.S. attorneys.

I guess that could be taken as some kind of indication that you do what you can. But that was not followed up with any real effort to encourage prosecution.

The Department of Justice has always been available to lend assistance when called upon. Information is funneled in there and you can sort of get an idea of what is going on around the country, if you call there.

I speak very highly of the people at the Justice Department who are available to me to assist me in that way. I am not speaking derogatorily at all.

In the more recent years in the Department of Justice if any policy could be discerned at all, and it is by osmosis rather than reading it off the page, it was more why don't you all quit doing this sort of thing. In fact, there was a statement made by a Deputy Attorney General last summer about the prosecutions in Memphis, where he stated to the other U.S. attorneys "Please don't do what Parrish has done in Memphis," indicating, really, a reluctance to support the prosecution, much less encourage prosecution.

Mr. **Ashbrook.** That was going to be the other part of my question, and I guess you have answered it. I was going to say conversely, was there anything that might be taken as discouragement of prosecution. What you just said, that would, I guess, by interpretation that would be a general discouragement of U.S. attorneys in any district throughout the country from proceeding with the type of cases that you have endeavored to prosecute. Is that an accurate statement?

Mr. **Parrish.** Yes, sir. I think any prosecutions were pretty much independent actions on the part of U.S. attorneys in a locality.

Mr. **Ashbrook.** Do you think a part of that discouragement was the difficulty in achieving convictions because of the statutes, the way they are written? You have many comments regarding the inadequacy of the statutes.

Or because they just generally succumb to what seems to be the convincing tone of the civil libertarians, who tell the prosecutors fredom of speech applies in this area, just forget it, bad as it might be, at least that is the way it seems to me.

Do you think it is because of the general philosophy of acceptance rather than doing anything to remedy these particular problems?

Mr. **Parrish.** I think it is a combination of both. I think certainly the protestations of the civil libertarians, as you have described them, have a very definite impact. Also on the part of the prosecutors, though, it is a sort of a feeling you don't know what the law is. And you would rather grab hold of a statute that you know where you are, and run with that.

So there is this general sense about moving forward. And I can fully appreciate that, because it takes a lot of research. Most of my time was spent in the library, not in the court room. And you are confronted with professional obscenity defense lawyers, who do nothing but that. And they know all of the tricks, the difference average and unaverage, appeal and arousal, all of these little things that arise in the middle of trials.

I learned in one trial and had to apply it in the next trial. But it just takes the judge by surprise, the prosecutor by surprise, and you say there must be an easier way to live.

But having been through trials with Federal prosecutors by phone, they would call in the morning and say, "Now we are going to pick the jury," call at noon and say, "We have one picked, now what do I do." I have been through four or five of those. At the end of them, there is the same response from all of them, and that is that was really a professional challenge. And they hadn't perceived of it as a challenge, but once they got into it, they saw it was more a professional challenge than they anticipated.

Mr. **Ashbrook.** One thing does seem to be a little inconsistent in your argument, and I don't say this critically, but you indicate you would rather, at least I think you indicated you would rather have general laws rather than singling out the area of child pornography. At least that seems to come through.

While you understand it and probably support it, you think it is better to have a general overall statute rather than just one in this one particular area. However, in this one particular area, the courts have generally been more sympathetic in upholding efforts to restrict the dissemination for what might be called pornographic explicit materials.

So wouldn't it be beter if we go ahead in this particular case, rather than to have a broad statute like you have on page 11?

I guess the bottom line is you are saying we ought to have a statute like this that deals with everything, rather than cutting out child pornography and doing something with that legislatively.

Is that a fair appraisal?

Mr. **Parrish.** That is a fair appraisal. I think the sympathy from the courts, if it can be described that way, is a situation where they have dealt with the dissemination of material generally to children. In other words, constitutionally you can prohibit the dissemination of nonobscene sexually explicit material to children. And even the dissenters on the Supreme Court hold to that. I think that has sort of been misinterpreted as an indication by the Court that we will allow you to have under the Constitution more authority to restrict production of materials using children.

If we are talking about "ought," I think there ought to be that kind of license, but I don't think there is really that kind of judicial mandate to do that.

Mr. **Ashbrook.** I will close on that point. Actually we will never know that until it is litigated squarely before the Court on that point. I suppose that is hanging over the top of our consideration, as to what would happen on that particular appeal.

Thank you very much, Mr. Parrish. Thank you, Mr. Chairman.

Mr. **Conyers.** Mr. Ertel.

Mr. **Ertel.** Thank you, Mr. Chairman. Mr. Parrish, I would like to follow up on what Mr. Ashbrook said. On the bottom of page 11 of your testimony you state:

> A statute such as this would be a proper Federal response to the increasing tendency of the persons responsible for the child porn to travel in interstate commerce with children who they so abused and solicit from around the country. It is my opinion that such conduct will increase widely. The amendments which I suggest, however, could nip that increase in the bud.

This suggests to me we need amendments to take care of the interstate transportation of children and child pornography materials.

Then I go to page 14 of your statement, and I will quote from the last paragraph:

> However, as inadequate as they are, they are fully sufficient to cover all obscenity using children as the sex objects.

You are talking about the current Federal obscenity law.

> That is why there is absolutely no new legislation needed which concerns itself with nothing but child obscenity and why legislation specially dealing with that genre of obscene materials would be interpreted as a statement by Congress that the current law did not cover such materials. One would then be justified in asking "If it does not cover that kind of material, what in the world does it cover?"

Are you suggesting we do need amendments to the Federal obscenity statute, or are you saying we don't need them?

Mr. **Parrish.** That is very confusing. I will try to explain that.

The amendments I suggest to section 2423 I don't perceive as amendments to obscenity legislation. That is not a part of the obscenity law of the Federal Government. That is the law that prohibits the transportation of persons or, as it now says, of girls by common carrier for various purposes.

I would suggest just to nip this transportation problem in the bud that could be expanded to cover the transportation of children for the purpose of making these materials.

And this is a very definite problem, just between New York and California there is a gateway of children being transported back and forth.

Mr. **Ertel.** If I may interrupt you, then you are suggesting we amend the Mann Act to include minors?

Mr. **Parrish.** This is not the Mann Act either. It is one of the laws passed in connection with the Mann Act. Yes; I do. And I think that would be an appropriate first step, before you really get in and investigate the whole problem of child pornography as such.

In that connection, I think it would be a mistake to amend the obscenity laws or to have an additional obscenity law dealing with those materials which use children as sex objects.

Mr. **Ertel.** Do you accept the Supreme Court test for pornography or obscenity in relation to children and adults?

Mr. **Parrish.** As to the dissemination to persons who are children.

Mr. **Ertel.** Therefore would it not be appropriate for us to treat the two, minors as compared to adults, differently?

Mr. **Parrish.** As far as the persons who appear in the materials that are made? I think it would probably be a good—I dont' see anything wrong with that basic proposition.

But I think there is such a desperate need for revision of the obscenity laws in general, that that would be interpolated by law enforcement as saying well, see, they are going to stop this, but they have given license on the other hand to beastiality, and urolagnia, and other kinds of sadomasochistic materials. So it will be interpolated as a mandate from Congress that we concentrate only on child pornography and the other is left to go.

Mr. Ertel. You say that the laws are adequate to cover children as sex objects. Yet we have seen at least in these hearings that there is a great deal of use of children in this pornographic material. So are you saying that, at the bottom line, these children are being utilized because of an inefficiency or lack of purpose in the law enforcement establishments either to investigate or prosecute this type of activity?

Mr. Parrish. I think that is more of a problem than the lack of legislation, yes, sir.

Mr. Ertel. Is there any way this committee can do anything to enhance the prosecution of those involved in child pornography?

Mr. Parrish. Well, I suggest along the way in my written comments that I think one appropriate way Congress could have acted in the past is to investigate why there were no effective Federal prosecutions under the obscenity laws. And call the prosecutors to the front to explain to the American people why they are not doing their job. If there were legislative changes that should have been made along the way, because they say the law is insufficient, that could have been done. If there were no other reason than prosecutorial discretion, they would have to answer to the American public for that.

I don't think we would have any child pornography today, or the other near crisis we have with the proliferation of obscenity generally, if that kind of pressure, if you want to call it, had been exerted on the prosecutors. I think it may have some effect. It would give the prosecutors too—I am very defensive of prosecutors, because I am one at heart, and I imagine I always will be—but it would give them a sense of somebody is backing me up out there.

Right now they feel like when they go out on that limb, they are by themselves, and somebody just might cut it off.

Mr. Ertel. Well, just to follow that up, I was a prosecutor before I came here, and I never felt that I needed somebody to back me up, if I had the material on my side and was able to argue my case.

I am not sure I would want to haul a U.S. attorney before this committee and try to influence his discretion in one particular area. I just don't know what the practicality and the results of that would be.

Mr. Conyers. Mr. Railsback.

Mr. Railsback. Mr. Parrish, do you happen to be familiar with the Senate bill that has been reported out of committee by the Senate dealing with some of the same matters that you have recommended?

Mr. Parrish. I have only been told that there was one. I haven't read it. I don't know about its provisions.

Mr. Railsback. So you are not really in a position to be critical of it.

As I understand it, it would amend the Mann Act and further deal with making the obscenity laws stricter as far as penalties.

As I read your statement and listened to your comments, you think there is much more involved really than just the Federal Government trying to come up with an all-inclusive Federal statute?

As I understand it, you are suggesting that maybe we have a law for the District of Columbia, which we could frame, which would then serve as a model which could be sold to the States for State enactment? Is that correct?

Mr. Parrish. Yes, sir.

Mr. Railsback. I don't think I have ever heard of that being done. It is kind of a unique idea.

Mr. Parrish. In the materials I have submitted, I have indicated what I consider to be an adequate statute to do what I have recommended. I have also drafted a similar statute for the use of State legislatures, because of the requests that I get. The law is very long, it is 30 pages long, but the length is necessary to restrict its scope.

I think it is one of a very narrow breadth, but the length sometimes is deceiving when you first see it. It would scare me.

Mr. Railsback. May I just say I am a little bit concerned, and maybe you can address yourself to this, I am concerned about a common theme that seems to be running through much of this testimony that seems to distinguish between child pornography and child abuse, or child exploitation.

What I wonder is what is your feeling about the adequacy of child exploitation laws?

In other words, where children are used for illicit purposes, prostitution, and so forth?

Mr. Parrish. I think historically that has been such a small problem that the States have never stopped to take a good look at it. And the laws that they have, come out of the historical background and haven't been updated. I think that the laws generally are inadequate, or the kinds of conduct we see rampant today could not exist. It just could not happen.

As far as having studied each of the States, various child exploitation laws, I have not done that, I am just giving observations from the results I have seen.

Mr. Railsback. Thank you.

Mr. Conyers. Mr. Volkmer.

Mr. Volkmer. It appears to me one of the things you point to is a lack of prosecutorial zeal in the officials we have. We have laws on the books to take care of most of this, but perhaps the zeal is not here. Is that correct?

Mr. Parrish. I think zeal is your choice of words, but it is as good as mine, yes.

Mr. Volkmer. I would say the desire to prosecute those type of cases.

Mr. Parrish. I see a couple of things on the part of prosecutors that restrict them. Some of them are generally philosophically inclined against the oughtness of the obscenity laws. Therefore, in setting their priorities, as to how they are going to allot their manpower, this always gets allotted at the bottom of the barrel. I think that is somewhat of a problem.

I think a greater problem is that prosecutors are just not familiar enough with the law to feel comfortable with it when they go into the courtroom, and they don't take the time to get familiar enough to feel comfortable with it.

Mr. Volkmer. In their areas they may feel there is no demand for it in order to use their personnel.

Mr. Parrish. If any are actually concerned about public reaction, I assume some are, that would certainly be a controlling factor.

Mr. Volkmer. Thank you.

Mr. CONYERS. It has been a pleasure having you here, Mr. Parrish. I know you are going to follow our activities as we try to legislate our way out of a very difficult situation.

Mr. PARRISH. Thank you.

Mr. CONYERS. Our next witnesses are Mr. Larry Flynt and Mr. Herald Fahringer.

TESTIMONY OF LARRY FLYNT, PUBLISHER OF HUSTLER MAGAZINE AND HERALD FAHRINGER, DEFENSE ATTORNEY REPRESENTING PUBLISHER OF HUSTLER MAGAZINE

Mr. CONYERS. Welcome, gentlemen. You have a prepared statement that will suffice for both of you. I should note that Attorney Fahringer is a general counsel to the First Amendment Lawyers Association, and has handled a number of cases of that nature before the U.S. Supreme Court, and he is a member of the American College of Trial Lawyers, and has written extensively on first amendment questions.

We welcome you before the subcommittee. We appreciate that you communicated with our staff becouse of your interest in the subject matter. We have your prepared statement which will be entered into the record. And you may proceed in your own way.

Mr. FLYNT. Mr. Chairman, distinguished members of the committee: I am pleased to be here. I have with me an article on child abuse written by Dr. Prescott, who is with HEW here in the District of Columbia. I would to like to submit that along with the additional statement to the members of the committee as part of the record.

Mr. CONYERS. That sounds reasonable. Without objection, it is so ordered.

[The information referred to has been retained in committee files.]

Mr. FLYNT. Do you want me to do this afterwards?

Mr. CONYERS. No; the staff will see that that is distributed. We sometimes have a problem in these hearings where the witnesses bring material in, the nature of which we are not fully aware of. So we have the staff handle that.

Mr. FLYNT. First of all, I would like to state at the outset that I am opposed to child abuse or the exploitation of children in any manner.

But I am here today because I am not only concerned about it, I am concerned about the first amendment implications as well.

This morning I picked up a copy of the New York magazine and on the cover of that magazine they have a woman and her daughter, and it says "Meet Terry and Brooke Shields. Brook is 12, she poses nude; Terry is her mother, she thinks it is swell." New York is a very respected magazine. This is about a movie that this 12-year-old girl appears in.

I am not going to elaborate on if the movie meets the criteria of the Federal obscenity statute. But I do feel New York magazine is constitutionally protected, has a constitutional right to publish this article. And this is what I am concerned about, with the legislation being considered as it is. It just horrifies me at the thought of the first amendment getting dragged into another murky situation. And I see this happening. I feel that somehow we must deal with child abuse and sexual exploitation of children through child abuse laws and not involve the first amendment.

I don't know if this is possible, but rather than legislation, I think there is a need for better understanding of human sexuality. I don't feel that legislation is going to be the answer. There is probably not anyone in the world that is more familiar with pornography than I am.

Mr. **Conyers**. From a professional point of view.

Mr. **Flynt**. From a professional point of view. Pornography is my business. And I have over 10 million readers of my magazine, it is a combined readership, over 50 million. The majority of the letters that come into my magazine are from people that would like to see photographs of shaved genitalia. What they are really asking for is photographs of children, but they can't come out and say it.

There are millions of these dirty little old men out there, and legislation is not going to help it, it is going to make it worse.

I think we must direct our energies to a better understanding of why these problems happen in society.

At the turn of the century we had 50 million people in this country; we have 250 million people now. Our cultural evolution has forced changes, but we must be receptive to them. The Judeo-Christian ethnic, as it exists today, has created more neurotics in society than any other single factor. I do not say this as an atheist, but as a man who believes in God, but a just God, and I think that an individual has to find Him within himself. I think after all of the rhetoric and all that is said in the Scripture, the only thing He ever really intended was for us to live fairly with one another. If we don't get the church out of the business of drafting legislation, we are not going to have a world to live in.

Many of the people who are going to be affected by the laws, and I am talking about people who would be prosecuted, they really need medical help more than imprisonment.

You know, we spend millions and millions of dollars to try to get a better understanding of the diseases like cancer, heart disease, the common killers, so we can know something about them and do something about them. When it comes to human sexuality, nobody seems to want to spend any money or to find anything out. Most people know more about changing a flat tire than they do about human sexuality.

It is absolutely essential. We use it to communicate with more than any other medium today, yet it is the only medium of communication not protected by the first amendment. Marijuana seems to be tolerated to a certain degree in society today. The statistics indicate that over 18 million people use it, many States are passing legislation to decriminalize it. I see this happening probably because everybody was doing it, so as a society we are going to condone it.

Are we going to condone child abuse, sexual exploitation of children, because everybody is doing it?

Gentlemen, in all due respect, I submit that there are millions, not a handful, millions of people out there that are turned on by children and want to see them exploited sexually. It is sad, but it exists.

It exists because of the paradoxial society we live in, and all of the years of hypocracy and inconsistency. The biggest reason for this, and this is medically, but I would hope the committee would look into it, is that the men appear to be more fascinated with genitalia and nudism than women. Playgirl magazine hasn't had any success. The reason for this is because the genital area is the most tabooed part of the female body; it is what the ankle was 30 years ago. And when it is on a child, or an adolescent, it is even more fascinating.

Women grow up with children, most often women are helping raise little brother or little sister, helping raise their own children, and they have a lot of contact with them, a lot of exposure to nudity. You find the female doesn't have these hang-ups and these difficulties that the males do.

So when you pass laws that make it even more repressive, you are really perpetuating a problem rather than doing anything about it.

I am not saying we don't need this legislation. I think we have to be very careful about it. It is a question of people having an awfully lot of preconceived ideas.

We just simply can not, can not approach this problem out of emotion. We must do it out of knowledge. Many people could say I am here because I make a lot of money on pornography. I tried to give some of that money to our President to establish a Commission for this purpose. He would not accept it. I can understand probably the reasons why he couldn't. I am prepared today to turn all of my profits and future profits of Hustler magazine over to this committee or a new Commission that would be set up to study child abuse and the prevention of it, because it is more important to me than the money involved, because if my theories, and the theories of Dr. Prescott are correct, that means we are right, and everybody else is wrong, and society is 180 degrees out.

So with that kind of gamble, I think it is worth it.

Thank you.

Mr. Conyers. Thank you very much.

Mr. Fahringer. Mr. Chairman, I just have a few remarks. I will be very brief on the legal aspects of this.

I want to also join in what Mr. Flynt said, that we endorse any action by this Congress or any State legislature that will control in any fashion mistreatment of children.

My remarks will be addressed solely and exclusively to the section of the law that prohibits the publication and interstate distribution of photographs of young people in the nude or in sexual acts.

Any constitutional evaluation of this law of course has to be made against the backdrop of the first amendment and the standards that have been fixed by our highest court in regulating the parameters of governmental control in this very sensitive area.

No Constitution zone has ever been more closely patrolled by the U.S. Supreme Court. As I see it, the major flaw in this new law is the restraint it imposes on articles, films, that might deal with young people in an artistic and perhaps socially worthwhile fashion.

I know it is a thesis of this legislation that by discouraging the making of films and pictures that mistreat young people, we will then, and also by prohibiting the distribution of those films, we will destroy the incentive for those who manufacture them.

I would remind the committee that although this analogy I think is not perfect, but assault, rape, a lot of other crimes harmful to the community and punishable under law do not fall into that category, where we control the press in terms of showing pictures of those offenses that, incidentally, very often are repulsive to most of us.

The hazard inherent in suppressing pictures or films dealing with—lets' take a narrow category—female or male nudity among young people is best demonstrated by the article that is now a cover story on New York magazine. Albeit the nude picture of this young 12-year-old girl that appears in New York magazine is not full nudity, it could just as easily be more extravagant. I would hate to think this magazine would fall within the proscriptions of this Federal law.

Two months ago, the New York Times ran an expose of child pornography in Times Square. They did not run pictures, but I would think had they elected to run pictures that illustrated the dangers inherent in the very subject you are addressing, it might well come within the clutches of this new law.

A year ago, I saw a film in New York City dealing with incest that was nominated for an academy award as the best foreign film of the year, and was critically acclaimed. That picture had what appeared to be a young man under the age of 15 who was implicitly described in the film, albeit not explicitly, of having intercourse with his mother.

I could go on and on. I wonder if in the motion picture "Taxi Driver," if it had been more explicit in showing Jody Foster, a 15-year-old prostitute, perhaps having relations with one of her customers, in a simulated fashion as this law controls, or perhaps described in the nude, whether that film would be condemned under this law.

The leading photographic magazines of this country that have displayed both girls and boys under the age of 16 in the nude and done by some of the country's leading photographers, might also fall victim to this law.

I know each member of this committee is saying to themselves, "Well, of course that is not what we had in mind with this legislation." But laws that are dangerously vague are frequently misused by prosecutors around the country who brazenly push them beyond the limits that are intended by our Congress.

I remember, of course, the persecution of "Paper Moon" in Texas, just 4 years ago, as being perhaps the most classic example in which Tate O'Neil won the academy award of the year.

It seems to me that the mere passing of a law—and please don't misunderstand me, I am dealing with the distribution and publication of pictures that might fall within that law. The mere passing of a law of course has inhibitory effects upon publishers and film producers because they are frequently cautiously interpreted by their counsel and it might discourage the production of films that would be worthwhile to the rest of the community.

I also think that this law is afflicted with certain ambiguities.

Now if you will allow me a moment, I will be specific. When we use the word "nudity" and the phrase "for the purpose of sexual stimulation and gratification," terms that at least are illusive, I am wondering whether those words couldn't be stretched to cover some of the examples I have just supplied to the committee.

It seems to me we must ask ourselves the question, does nudity mean full-blown nudity, does it mean partial nudity, nudity above the waist, does it mean nudity of the rear? The magazine I have referred to indicates at least in the article that this young 12-year-old girl was photographed clearly in the nude from the rear, and it was also shown in the film soon to be released having what was simulated sexual acts.

It seems to me any attempt to define with any degree of precision the term "sexual stimulation and gratification would be a most hazardous undertaking. Uncertainty in penal statutes, as this committee knows, to the degree manifested it seems to me in this law has consistently been held by the courts to render them inoperative.

I fear, in a word, that expansive language will draw within the undertow of this law thousands of pictures and hundreds of films that the public should be allowed to see if they wish.

I think the objectives of this law can be fulfilled, and I am in accord with what the committee is trying to do, by, one, relying heavily upon the first branch of that law that prohibits the abuse of children directly by using them in films and photographing them in sexual acts. And then to rely upon those sections of the law that now cover the interstate distribution of obscenity, sections 1361, 1462, 1463, 1464, and 1465, which have already been authoritatively construed by the U.S. Supreme Court and brought into harmony with the first amendment.

Obviously conspicuously missing from this law is the so-called Miller test, which requires that any picture or film or book be found to have a lascivious appeal and which lack literary, artistic, or scientific value.

The argument might be made that maybe the Court would apply that construction, but it would seem to me well designed by this committee to make certain that construction is built into the statute. In closing, let me just take the luxury of perhaps an irrelevant comment. We should remind ourselves constantly that the President's Commission on Obscenity and Pornography, which was composed of one of the largest task forces of social scientists that have ever been assembled to study the influence of pornography on human behavior, reached the inescapable conclusion that even the hardest core pornography does not contribute to sexual offenses or does not alter our sexual desires.

I think it is disappointing and unfortunate, keeping in mind the distinction of that Commission, that so many of our political leaders disavowed it because of their unpopular findings.

There has never been produced reliable and dependable evidence that indicates pornography harms anyone.

It seems to me what the committee must keep in its mind is every time we pass a new law that controls somewhat what the rest of us may read and see, we do harm to a free society.

Finally, let me just say that I think if we keep building these high walls of decency in this country, well-intentioned, of course, but extravagantly constructed, we may build a prison for all of us. In a free society we should all be able to read and see what we please. My devotion and convictions are based upon an abiding confidence in the American public's ability to read and see any film or read any book leads me to the irresistable conclusion that we don't need any more laws in the area of what the adult population can read and see; we only need narrowly drafted legislation that will point at the heart of the misconduct that is taking young people and exploiting them brutally.

It seems to me that will achieve the objectives of this committee. Thank you very much.

[The prepared statement of Mr. Fahringer follows:]

STATEMENT OF HERALD PRICE FAHRINGER

H.R. 3913 is a bill designed "to prohibit the sexual exploitation of children and the transportation in interstate or foregn commerce of photographs or films depicting such exploitation." My comments are not directed to the provisions of Section 2251 of H.R. 3913, dealing with the photographing or filming of children engaged in sexual acts, because I share the Committee's concern over the alarming rise in child abuse in this country, and I endorse all efforts to protect children from any form of mistreatment. My testimony will be addressed to Section 2252 whch prohibits, in effect, the publication of photographs depicting the abuse of children in magazines shipped or mailed in interstate commerce.

Any constitutional evaluation of H.R. 3913 has to be made against the backdrop of that form of expression traditionally protected by the first amendment, and those standards which clearly outline the perimeters, of proper governmental regulation in this highly sensitive area. The major flaw in this new law is the unconstitutional restriction placed upon publishers, prohibiting, in effect, the printing of pictures dealing with child abuse. Murder, assault, rape and a host of other acts harmful to the community are punishable under our laws, but no limits have ever been placed upon the propagation of photographs or films covering these subjects by the press.

The objectives of H.R. 3913 can be achieved without impinging, so drastically, upon a free press and the public's right to see and read what it pleases. The sanctions of Section 2251, dealing with the actual abuse of children, when refined and brought into harmony with basic due process requirements, are more than adequate to fulfill the objectives of this statute. Furthermore, the provisions of Sections 1361; 1462; 1463; 1464; 1465, of Title 18 dealing with the sale and distribution of obscene publications, sufficiently control the publication of pictures portraying child abuse which are obscene. These statutes have been construed by the Supreme Court of the United States in a fashion consonant with the constitutional requirements of the first amendment.

There are hazards inherent in suppressing pictures displaying child abuse. For instance, if Hustler Magazine, or for that matter, The New York Times, wanted to publish an illustrated article dealing with the prevalence of child pornography in our nation today, and mail it in interstate commerce, they would come within the clutches of this misdirected law. Such a consequence is constitutionally intolerable.

I fear that H.R. 3913 will inhibit the publication of commentaries on this controversial subject which the public should be able to read about. In a democracy, it is imperative that all new and unconventional ideas be heard or read—no matter how offensive they may be to the establishment—so that we might discover the few thoughts that may be truly useful to the rest of us. Just as the public has a right to read about different sex attitudes that may be bizarre or distasteful to the majority. It has been said, "What is one man's amusement, teaches another man's doctrine."

Section 2242 is afflicted with a fatal ambiguity resulting in inadequate notice to journalists of what conduct is to be avoided. The statutory terms, such as, "any other sexual activities", "nudity—for the purpose of sexual stimulation or gratification," are too vague and illusive, and do not give a fair warning to the press so that disobedience can be averted. Uncertainty in a penal statute, to the degree manifested in Section 2252 has been consistently held by the courts to render the law inoperative. This elastic language will drag within the undertow of this new law thousands of words, and perhaps hundreds of pictures, that the public should be allowed to see, if they wish to. Much more specific guidelines are needed to make this proposed enactment compatible with the mandates of the first and fifth amendments.

I have an abiding confidence in the American public's ability to read any book or see any film without being corrupted. The only speech that can be constitutionally controlled is that which is so closely brigaded with illegal action that it poses a clear and present danger to the community. The President's Commission on obscenity, which represents the largest task force of social scientists

ever assembled to investigate the influence of obscenity on human behavior, concludes that even the hardest core pornography does not contribute to the commission of sexual offenses, nor does it alter our sexual desires. No reliable evidence has ever been produced which indicates that pornography is harmful. Consequently, there is absolutely no basis for making its production or distribution criminal since it poses no threat to our welfare.

However, of much greater importance, is the realization that the recent wave of ill-conceived obscenity prosecutions sweeping this country, and the government to enact new laws controlling what the public may read and see, is having an anguishing impact upon our freedom. None other than the former Chief Justice Oliver Wendell Holmes said, "Freedom is achieved only by the perilous methods used in granting it to our enemies." Freedom means putting up with thoughts that we hate. To enjoy the larger benefits of a free society, requires a great deal of forebearance. The late Mr. Justice Jackson of the United States Supreme Court urged, "The price we must pay for a free press is that we must put up with and even pay for a good deal of rubbish."

When our forefathers granted to all of us the right of free expression ,they understood that it would not always be exercised in good taste, nor would its use be pleasing to those in places of power. We were accorded this great right because our ancestors knew of no other way a free people could conduct a representative form of government.

Mr. Justice Stewart of the Supreme Court has said "Censorship reflects a society's lack of confidence in itself." Eighty-one percent of the people of this world have lost their freedom. That startling statistic should remind each of us what a precious, but perishable, commodity free expression is. Yet, I worry that many of us are becoming too cavalier about this great right. Perhaps, its just because free speech is not always easily recognized. Free speech is formless, it has no boundaries. We cannot permit it to be housebroken or domesticated by the establishment. It is not for federal or state prosecutors, legislators, judges, or jurors, to sanitize our literature or cleanse our public debate. The choice of what we read or see must remain with us. The control of obscenity should be left to the self-regulating forces of a society's taste. Gresham's Law does not apply in the world of literature, that is, the bad does not drive out the good. Those who are appalled by the frank sexual descriptions that appear in today's many publications, including those dealing with child abuse, can refrain from reading them. And those who gain some enjoyment or enlightenment from these materials should have the hight to see them. One thing is certain, if we keep building these high walls of decency, they will soon form a prison for all of us.

The prevalence in our society today of triple X-rated movies, dirty books, peep shows, underground newspapers, and live sex shows is distressing to many, but this phenomenon apparently proves that a nation gets the kind of art and entertainment it wants and is willing to pay for. Those who believe that this country's new breed of writers and film makers should have their mouths washed out with soap for using four letter words as shock weapons in their war on social complacency, must remember that no on is compelled either to read or see what is repulsive to him or her. If the law suppressed that which sizable minorities in our society dislike, our culture store would be sparsely stocked.

We must never lose hope that the day will come in this country when the witchcraft of pornography will no longer be feared. For obscenity breathes and multiplies in the dark crevices of a frightened society preoccupied with a sense of self-censorship. Once pornography is exposed to the strong sunlight of completely free and uninhibited people, its appeal will surely diminish. And if that assumption proves to be wrong, then we must live with the level and variety of tastes which the marketplace theory of the first amendment encourages and protects. The time has come for us to test our courage, our faith and our beliefs in the first amendment. We are the strongest nation in the world, and our strength—not our weakness—lies in the toleration of all forms of expression. The right to read and see what we please must include every book, film, magazine and newspaper and every tape of picture, story, or article, or in the long run, it may include none. We must not be afraid to be free.

Mr. CONYERS. I want to thank both of you gentlemen. I think, contrary perhaps to some few original fears, that you have made an important and significant statement for this committee to ponder.

I presume that you know that every member on this subcommittee is very deeply concerned about the cautions that you have ennumerated here today. As a matter of fact, this committee has been accused of moving too slowly, beacuse there are those that would argue that we should have passed a law right away. But we have moved, I think, in a deliberate manner. We have had all kinds of views expressed here about the problems and the constitutional question that is involved as well as the social questions that are involved.

So that your admonitions do not fall upon deaf ears. Now there is one part of your statement, counsel, that gives me some question. "Those who are appalled by the frank sexual descriptions that appear in today's publications, including those dealing with child abuse, can refrain from reading them."

It really is not as easy as that, is it?

Mr. **Fahringer.** I think, Congressman, what I am trying to say, and perhaps I said it poorly, is that the whole solution, it seems to me, to the general subject of pornography—I am talking about the audience now, the public, they like to read and see it. I have always maintained those who are offended by these materials, and I am not talking about children now, have, of course, the option of not going to the films or not reading the books.

I have always objected to the right to interfere with someone else's ability to see the film or read the book.

Mr. **Conyers.** It is sometimes a more complicated problem than that. A lot of times you don't get the opportunity to make the decision that you don't want to see it. It is thrust upon you before you can use that election, it seems to me. That is the problem.

I am perfectly in agreement with you, we have a serious and delicate first amendment question. But the fact still remains that many people in our citizenry are complaining they are confronted with obscenity activities and they don't want them, they don't want a dirty book store in their neighborhood. And they don't have the right to elect not to have it there. They don't want marquees calling attention to this kind of obscenity in the movies, which they have to look at whether they go to the movie or not.

There are many kinds of questions like that. So that I think to say we can merely refrain from reading or don't have to go to the movie, or don't buy a ticket, doesn't really address, in our compact society, the real nature of the problem of the citizens who are complaining about this.

Now let me move to another question. Is this, Mr. Flynt, the announcement you have made here today about your concern for child abuse, and its prevention, your willingness to dedicate your profits, which must amount to a very sizable commitment on your part, is this a new position that you are ennunciating at this hearing?

Mr. **Flynt.** Yes, and no. I offered to pay for the establishment of a Presidential commission for a similar purpose. And I didn't get anywhere on that. I felt this would be an appropriate time, of course, to try again to establish my sincerity.

Mr. **Conyers.** I would like to help you develop other ways to handle this question, if you are committed to reducing or perhaps even preventing child abuse in our society. In your magazine, are children depicted in any fashion that would be described as obscene?

Mr. Flynt. Not photographed nude. We have depicted children in cartoons which appear in Hustler magazine. I think down through history, humor has always been based on man's inhumanity to man.

I don't feel that it in any way exploits the situation. Johnny Carson makes fun every night about Jimmy Carter's job running the country, but I don't think it is funny, he has a very serious job on his hands.

Mr. Conyers. Do you see any contradiction in the fact that you may be subject to those who would accuse your magazine of depicting children in an obscene and inappropriate manner and your articulation now of your dedication to eliminating or at least reducing child abuse in this country?

Mr. Flynt. Mr. Chairman, I don't have the answer, but if I am responsible for polluting the minds of millions of people, I want to know about it, so I can stop.

I don't think one individual should be hung out as a scapegoat. I think Mr. Hefner and others have portrayed pornography as an art long enough. I think we have to find out what effect it is having on society.

Mr. Conyers. I must say it seems to me you might be, by virtue of your conceded experience in the subject, just the man to lead a crusade in this country. It might lead to a different kind of magazine or some serious alterations in your magazine, as I understand the way it is published now.

Mr. Flynt. Mr. Chairman, if it will make it a better world to live in, I am all for it. You know, the chief criterion in Hollywood now for a successful TV show is find a group of neurotic writers. So that what we are seeing coming across is an extension of their own neuroses, not only an opinion shared by me, but shared by any social scientist worth his bread.

When it comes to violence and sexual exploitation, it is a question of us fearing the cure more than the cause. So you see all I want to accomplish with my magazine and my attitude is to get people not to agree with me, but to reassess their own attitudes and values, and try to recognize the problem, as Mr. Fahringer says, go to the core and nip it in the bud, so to speak.

Mr. Conyers. That sounds like our mission on this side of the table.

Now in terms of the contribution, you realize it is sometimes difficult, it may be impossible, to give money to the Government. You would have to work through a foundation, or through some appropriate agency.

Mr. Flynt. I am concerned that in working through a private concern, private sector, that it would not get recognized. That way my reason for trying to possibly influence the President, or influence his commission.

I think if a subcommittee was set up to take a bipartisan approach—that was the big complaint about the Presidential Commission before, that many people like Charlie Keene and Dr. Lang and Father Hill, that they didn't get an opportunity to have their day.

So I think we should let them have their day, and it should be something that the Government should be involved in, not as a censor, but to really help us gain this better understanding.

I don't think if we used the private sector that we would really get a study that will be accepted.

Mr. Conyers. Mr. Ashbrook.

Mr. Ashbrook. Thank you, Mr. Chairman. I guess I would direct this question to you, Mr. Flynt, but I guess in general to Mr. Fahringer too. You both seem to come down on nudity and talk in those terms. But if we could shift a minute, is it your contention that explicit sexual acts by children, whether in film or in print, are protected constitutionally, and therefore the film and publication and distribution is both a constitutional problem?

Mr. Fahringer. No; I don't urge that. What troubles me more about the law is when you get into the area of the gray situations, simulated. I can easily see how a very artistic film could be made that would suggest in no uncertain terms a young girl like Jody Foster in Taxi Driver having intercourse with a man that was an integral part of the story. I would hate to see those films sanitized to the degree that there can be none of that, not even a suggestion of sexual conduct, which very often plays a dynamic part in these things.

Mr. Ashbrook. That is why I used the word "explicit." It is your contention that explicit sexual acts by children could come under the area of some protection?

Mr. Fahringer. Yes; you have no trouble with that.

Mr. Flynt. Congressman, I see that a little differently. I am an absolutist when it comes to the Constitution. I don't feel there should be any obscenity laws; they should all be repealed. The American public should be able to do or read whatever they want, make their own decisions. But when children come into it, that is where you have to draw the line, because you are violating someone's rights that cannot speak for themselves.

So my position only is what goes on between consenting adults. The minute a child is involved, regardless of the nature of the act, I don't think it even has to be obscene, as far as our definition of obscenity goes, that a violation of the law has taken place.

But I think again, reiterating my position, that we must find a way to deal with it, if we can, without involving the first amendment.

Mr. Ashbrook. I asked that question because in listening to so much of the testimony, it seems to me to come down to one set of circumstances, you know, everybody says well, yes, we ought to prohibit these actions, but somehow or other, if it does happen, and does get into print or on film, at that point we can't do anything.

It just seems to me that that is obviously a good legal position, but as far as solving the problem, it is not. They say prohibit the action, prohibit child abuse, prohibit—I don't know, I hate to use the word perversion, because that would probably open up another area, but prohibit these explicit actions. But once it gets into print in a magazine or in a film, at that point under the Constitution we can not do anything. It seems to me many hang behind that particular difficulty.

I am glad to see at least you do think there is some area in which we can constitutionally proscribe some actions, even though they may be distasteful to civil libertarians.

Mr. Fahringer. I want to add one thing, if I may. That is, I dislike saying this to the committee, because I have some deep-seated feelings about nude pictures of children in sexual acts. But the U.S. Supreme Court, of course, has consistently adhered to a single test to decide whether something is obscene, whether it appeals to the average person's purient interests, whether it goes beyond contemporary community standards, and lacks redeeming value.

When you put that question, under that law I could easily find that a picture of the type you describe would fulfill this test, and would be illegally obscene.

But I think we ought to all remind ourselves of the fact that nowhere has the U.S. Supreme Court ever said that a picture of a 16-year-old girl having intercourse with a man would be obscene.

I suspect it might fall into that category.

Mr. Ashbrook. I certainly would stipulate that. We are dealing with a situation which will ultimately be tested in court. I can't conceive of anything being done here, if we do do anything here, it will be tested, retested, and tried.

I guess the question in the minds of most people, leaving the Constitution aside, is whether the grossest form of sexual exploitation of children can find constitutional protection in dissemination, or whether the courts will draw the line.

I guess we will have to wait and see. I think as a skillful lawyer, I would appreciate your observations on that. That is the only question I had, Mr. Chairman.

Mr. Conyers. Thank you. Mr. Ertel.

Mr. Ertel. Thank you, Mr. Chairman.

Mr. Flynt what is the distribution of your magazine?

Mr. Flynt. We have slightly over 3 million circulation with in excess of 10 million readership.

Mr. Ertel. You have indicated here that you would give the profits from that magazine to the Government for establishing a foundation or group to study the effects of child abuse or child pornography.

What kind of profits are we talking about?

Mr. Flynt. In the millions. If I have a bad year this year, I may make $20 million. If I have a good year I could make as much as $30 million. So there would be plenty of money to fund such a study.

Mr. Ertel. I appreciate that. Did you start this magazine with the idea that you were going to use the profits to fund a study on child abuse? Was this a recent idea to fund such a project?

Mr. Flynt. No. sir, I didn't. I started the magazine to make money. When I was a child I felt that capitalism was a dirty word. When I got a little older and realized all of those wars we fought were not against communism, but to defend capitalism, I wanted to make money by dealing with sex as I knew it, working on the farm as a child, in a factory. I wanted to write about it in the way my friends on the street talked about it, four-letter words and all.

I did that; it got me a prison sentence, and it has the country rather confused.

I would like to at this point try to make it a better world to live in.

Mr. Ertel. And you believed in the profit motive, went into pornography to exploit it and to put the money in your pocket, and now you are willing to contribute this money to the Government. Don't you think more severe penalties in effect, making the profit motive unprofitable on the people who use children in pornography, would in fact be effective to stop pornography?

Mr. Flynt. No; I do not.

Mr. Ertel. In other words, you would not have been deterred if you had been taxed all of your profits from this pornography?

Mr. Flynt. No. 1, I would not have been involved in the exploitation of children, to begin with. But I don't think I am trying to look at the whole——

Mr. Ertel. You don't think "Chester the Molester" is involvement in that? That is in your magazine, isn't it?

Mr. Flynt. I do not. What we are doing is we are making fun or ridiculing a stereotype. I don't think there is anybody that we haven't offended with Hustler magazine. That is part of our editorial philosophy.

Mr. Ertel. Would you have been deterred from involving yourself in any child pornography if your entire profits had been fined away from you as well as having to serve a prison term?

Mr. Flynt. I don't feel I have been involved in child pornography

Mr. Ertel. Let's assume you did. Assume that instead of going into general pornography, you chose to go into child pornography. Would you have been deterred?

Mr. Flynt. I wouldn't have gone into it so—I am not deterred about anything I believe in. I happen to believe in what I am doing now. I don't look at it as defying the law.

Mr. Ertel. Did you go into it for the profit motive? You didn't go into it with the idea of saving the world by putting out Hustler magazine, did you?

Mr. Flynt. I don't know, in the last year I think I have saved more marriages than Billy Graham.

Mr. Ertel. When you went into it, did you publish Hustler magazine to save the world, or to make a profit?

Mr. Flynt. To make a profit.

Mr. Ertel. Would you have been deterred if you had recognized that, if the magazine were illegal, your profits would have been taken away from you, and you would wind up in jail.

Mr. Flynt. Possibly, but I don't think we are solving the problem.

Mr. Ertel. Obviously if you have penalties for those involved in child pornography, it would have some effect, would it not?

Mr. Flynt. It would have a repressive effect, which I don't think would be good.

Mr. Ertel. You think we ought to have child pornography?

Mr. Flynt. No; I do not. But I think we should deal with it under the child abuse laws, and not forbid the publication of material.

Mr. Ertel. Now you are willing at this point in your career, when you are making $30 million a year, to give that money to a foundation?

Mr. Flynt. If the Government is involved. I want to give it to the Government.

Mr. Ertel. Let's say the Government is not allowed to be involved. Are you willing then to give it to a foundation, or is giving it the Government strictly a publicity ploy because you know we can't take it?

Mr. Flynt. No; it is not for publicity. I will give it to the private sector if the Government will recognize the findings. There is no point in me giving it away if it is not going to be accomplishing anything.

Mr. Ertel. If we recognize the findings. You won't give us the privilege, as Americans, to exercise free speech and free thought either to reject or accept some foundation's findings, which are opinion?

Mr. Flynt. No. That is why I feel the Government should be involved, to see who gets the money, who is on the commission, and the scientific value and merit of the research involved.

Mr. Ertel. Why don't you just set up the foundation, since you are concerned about who is on it, then you could name them, and you would be satisfied. You could put the money in, and then let's see if you go forward with Hustler magazine for the next 30 years.

Mr. Flynt. We are in the process of doing studies of that nature now. But I feel that they are futile unless the Government is involved, because it becomes a question of laws and not a question of opinions.

Mr. Ertel. We take studies from Brookings Institute, my colleagues on the left from the American Enterprise Institute, and we consider those studies and findings.

Mr. Ashbrook. On your right.

Mr. Ertel. You are on my left at this hearing. I am not sure where you are.

Mr. Flynt. Congressman, I feel that all antisocial behavior, including that of child abuse as well as the other sexual disfunctions, so-called fetishes that exist in society today, are caused by sexual repression, and not sexual permissiveness.

So I think we get back to the root of what is the attraction to pedophilia, or the exploitation of children. Maybe we can grasp a better understanding of human sexuality and be able to deal with it.

It is very difficult for adults like yourself to relate to this, because we have preconceived ideas about the concept of obscenity and about sex. But our children and their children, these are the ones to be influenced, and these are the ones we can help and help make it a better country to live in.

Mr. Ertel. I am trying to get to the point where we can put your money into a foundation; to see if you are willing to go ahead and put that money in a foundation.

And I want to ask you if there is a valid contract, sir, since you are an attorney, and we can take his money?

Mr. Flynt. Congressman, I have been accused of a lot of things, but never one of not keeping my word.

Mr. Ertel. I am willing to see that it is done. I am trying to get a foundation to take that money from your magazine. I think it is an anomaly to have Chester the Molester creating money to study Chester the Molester. But that is all right.

Mr. Fahringer. Let me make one comment. I didn't know Mr. Flynt was going to make that offer or I might have spoken to him about it before we came.

Mr. Ertel. I think as counsel you should have known that before he came in.

Mr. Fahringer. He has discussed this matter with me before, and genuinely, but I think any investigation in this area, to be effective, really should be done under the auspices of an agency whose integrity is not questioned. Of course there have been many, many studies done and prosecutors come up and tell you "Look who sponsored it, who is behind it." What we really are looking for—the present Commission on Pornography has been so badly mistreated, and——

Mr. Ertel. There are a lot of foundations around that are respected. But I won't belabor that. It is obvious we are not going to get that money into a foundation.

Mr. Fahringer. I am not so sure about that.

Mr. Railsback. Would the gentleman yield?

Mr. Ertel. Yes.

Mr. Conyers. Mr. Railsback.

Mr. Railsback. I am curious, Mr. Chairman, whether a person can, in fact, agree to give the Government money for this kind of a purpose. I don't know why we couldn't accept his offer and try to work out the details to his satisfaction. In other words, they want to see that whatever is conducted is conducted fairly, and it has the worthwhile purpose.

Jimmy Carter gave $6,000 back to the Treasury. Some of our members gave their pay raises back. I don't know why an individual can't.

Mr. Volkmer. Would the gentleman yield?

Mr. Railsback. Yes.

Mr. Volkmer. Would the gentleman serve as the chairman?

Mr. Railsback. I would love to be chairman of something for a change.

Mr. Volkmer. Perhaps the gentleman can serve as chairman and get a couple of other Members of the Congress to serve with you. Would that suffice, Mr. Flynt, that you give them all of the money? You have got the Government involved.

Mr. Ertel. Mr. Railsback, if you serve as chairman, I will sit down with the attorney for Mr. Flynt and see that the legal documents are drawn up, and it is legal, so you can use the money.

Mr. Flynt. We are getting somewhere. It is agreeable to me.

Mr. Railsback. Mr. Fahringer, I wonder if you have had a chance to study the bill that was recently reported out by a Senate subcommittee?

Mr. Fahringer. Congressman, I apologize, I have not. I didn't know one had been reported. The only bill I have had was the one your committee supplied me.

Mr. Railsback. Do I understand that you both are really saying you would have no objection if there was legislation relating to children, carefully and constitutionally drawn?

I see you nodding. Let the record show you are nodding your heads in the affirmative.

I think it would be very, very helpful if you could perhaps take a look at some of the pending legislation and give us your views. I happen to have attended an obscenity conference with one of your colleagues at Kenyon College, and I think you could really be most helpful to us in drafting something which would stand a constitutional assault. I am not sure you would want to do that.

Mr. Fahringer. I must tell you, Congressman, I am pleased and proud to be invited to do that and I welcome the opportunity to participate.

Mr. Railsback. Thank you. I also want to thank Mr. Flynt for his offer.

Mr. Flynt. Mr. Chairman, I have a comment on something you previously said.

Mr. Conyers. Yes, certainly.

Mr. Flynt. You alluded to your concern about the display of this material. I am not opposed to legislation restricting the sale or the display of sexually explicit material. In the 3 years that Hustler has been publishing, I am proud of say, I have never shown a bare breast on the cover of one of our magazines. The inside may be more explicit than the other magazines, but not the outside, because I feel that people who are walking through an airport or passing a newsstand with their children or what-have-you, or even if they themselves, are offended by the display of nudity, they should not have to look at it, because they have rights.

But once they pick up a copy of that magazine, once they go into a movie theater, they have given up any right they may have to have their privacy invaded.

You see, people can argue both sides pro and con, but no one seems to have the answer. I think I do. I think we have to start respecting one another's rights to reading material, just like we do the right to worship and vote as we choose.

Mr. Conyers. Thank you for your comments. Mr. Volkmer.

Mr. Volkmer. Thank you, Mr. Chairman. I have several questions. The thing that concerns me, you are sitting here, Mr. Flynt, telling us as an admitted pornographer, you are really concerned with child abuse.

Mr. Flynt. Yes, Congressman, I am.

Mr. Volkmer. Now if you are that concerned, you say distribute each month approximately 3 million of your magazine, do you not?

Mr. Flynt. Yes.

Mr. Volkmer. Where do those end up?

Mr. Flynt. They are sold all over the world.

Mr. Volkmer. How many children see them every day?

Mr. Flynt. I couldn't be sure of that.

Mr. Volkmer. You are positive that children see them every day?

Mr. Flynt. I assume children do see them, yes.

Mr. Volkmer. And there is nothing wrong with that, for a child 5, 6, 7, 8 years old looking at those pictures and if they are old enough to read, reading what you have in that magazine? You are telling us that is perfectly proper and has nothing to do with child abuse?

Mr. Flynt. I feel, Mr. Congressman, I feel that children are not affected by pornography, because they are not interested in it. I feel that children are interested in stuffed toys, not stuffed vaginas.

But by the time they get old enough to become sexually aware, they should know what is in the magazine.

Mr. Volkmer. You don't think a child will say what is this or that?

Mr. Flynt. And I think it should know.

Mr. Volkmer. At that stage, those explicit things?

Mr. Flynt. If it is not old enough to know what it is, it is not going to be affected by it.

Mr. Volkmer. It is old enough to ask questions. Now you said you think the church should be out of the legislative business in regard to obscenity. Are you saying the church should not be concerned with morals?

Mr. FLYNT. It should be concerned, within its congregation. But I don't think we should be legislating morality.

Mr. VOLKMER. Then should we accept your morality for the country?

Mr. FLYNT. No.

Mr. VOLKMER. Should we accept the morality of the 50 million people, approximately, who in this country who you say, I believe in your testimony, who enjoy the type of thing that you distribute?

Mr. FLYNT. You should not accept the morality, but you should accept the right of free choice.

Mr. VOLKMER. And those are the same people, many of whom need medical help?

Mr. FLYNT. Yes; some of the others do, too.

Mr. VOLKMER. Now just because out of 200 million people, 50 million people are doing something, does that make it right?

Mr. FLYNT. No, it does not make it right.

Mr. VOLKMER. And everybody is not doing it, if a smaller amount are doing it than are not doing it, is that right?

Mr. FLYNT. That is correct.

Mr. VOLKMER. In a democracy should a majority control or rule?

Mr. FLYNT. The majority should rule, but our Constitution is to protect the minorities.

Mr. VOLKMER. I believe it has been elaborated on, I believe you said that persons should have the right not to be offended?

Mr. FLYNT. Yes.

Mr. VOLKMER. Does this include any child that happens to walk into a drugstore that sees magazines and pictures?

Mr. FLYNT. Yes.

Mr. VOLKMER. How would you prevent that child from being offended?

Mr. FLYNT. I said I am not opposed to legislation restricting the sale and display of sexually explicit material.

Mr. VOLKMER. To children.

Mr. FLYNT. Even to children. I have never said that my magazine was for children. But we can not limit adult reading habits to what is fit for children, or we will have nothing but "Alice in Wonderland" and "Little Red Riding Hood."

Mr. VOLKMER. Perhaps the country would be better off than with what you have given the country.

Mr. FLYNT. I feel our first amendment gets its vitality and meaning from an unrestricted right of free choice by each individual. I do not feel we can compromise it.

Mr. VOLKMER. For you it is all right to say we should legislate to prevent a child from being photographed in explicit sexual positions, but is should be all right for you to disseminate that, is that correct?

Mr. FLYNT. No; I am not saying that.

Mr. VOLKMER. Yes; you are. You are saying it is all right for you to disseminate it, but it is wrong for somebody else to do it. How are you going to disseminate it if somebody doesn't do it?

Mr. FLYNT. That is why you have to go back and find out who is doing it.

Mr. VOLKMER. And you say that in the event that the Members of this body, this Congress, would set up an ad hoc committee to study child abuse, you would turn all of the money over to them from your magazine, all of the profits?

Mr. Flynt. Yes; I would.

Mr. Volkmer. Is that after taxes or before taxes?

Mr. Flynt. Any way they want it, as long as it is legal.

Mr. Volkmer. And you believe, sincerely, I suppose, from your testimony here, that what has been shown in your magazine and other similar magazines and periodicals should be permitted by this country, and films, et cetera, that they have had no adverse social effect on this country?

Mr. Flynt. I don't know. There is nothing that would indicate that it has.

Mr. Volkmer. What do you give—and this is a little along the same subject—what do you give as a cause of the number of child pregnancies in this country, over and above what there were 5, 10, 15, or 20 years ago, both percentagewise and numerically? What do you attribute that to?

Mr. Flynt. A number of factors. One is the lack of sex education. And the other factor that has had more effect on it than anything else is the changing woman's role, and by that I mean the women's movement.

And I do not say this cauvinistically, but a great deal of the pholosophy behind the feminist movement causes women to get into lesbianism or masturbation, and this results in emasculation of the male ego and a breakdown of the family unit in society as we know it.

I feel it is a much more serious problem than the sexual exploitation aspect. I just simply feel it is a side effect of the woman's movement that we have to face.

Mr. Volkmer. You blame the women's movement for it?

Mr. Flynt. We are moving closer and closer to a bisexual world, not as a result of being in a permissive society, but as a result of the women's movement.

Mr. Volkmer. There is participation in sexual activities a lot earlier than what occured in past years, is that correct?

Mr. Conyers. May I remind my colleague that his time is running out.

Mr. Volkmer. I will conclude.

You say that it is just humor, man's inhumanity to man, your words?

Mr. Flynt. Yes.

Mr. Volkmer. Do you personally agree with that type of humor?

Mr. Flynt. Yes, whether it is Laurel and Hardy, Charlie Chaplin, Abbott and Costello knocking each other over the head, people tripping and falling. You can't tell me any kind of humor that is not based on some sort of misfortune in life, because the only way you can make something funny is to take what is absurd and make it appear real, or take what is real and make it appear absurd. If anything, the appearance of this in Hustler magazine will at least get people to reassess attitudes and values.

Mr. Volkmer. You believe it is humorous for man to be inhuman to man?

Mr. Flynt. I didn't say that is what it stands for. I said that is why it exists.

Mr. Conyers. I want to thank you both for coming here. I think your testimony and the comments that have followed it have been helpful.

We would like to be able to direct to counsel a few questions through the mail for our staff to incorporate that we don't have time to go into today.

Mr. **Flynt**. We welcome them.

Mr. **Conyers**. Thank you both very much.

Our next witness is the Honorable Richard R. Wier, Jr., Attorney General of Delaware.

TESTIMONY OF HON. RICHARD R. WIER, JR., ATTORNEY GENERAL OF DELAWARE

Mr. **Conyers**. Mr. Wier, I know you are under some time constraints.

Mr. **Wier**. Not serious, Mr. Chairman.

Mr. **Conyers**. I am glad to hear that. We welcome you here, Mr. Attorney General, and recognize that you are among other things the youngest person to be elected to that office from your State. We appreciate your prepared testimony, and you may summarize it in any way that you wish, and please introduce your associate.

Mr. **Wier**. Mr. Chairman, my associate is Charles Meuse. One regret that I have is that I am not able to offer this committee $30 million.

Mr. **Conyers**. Yes; you come in a very difficult position here, with no monetary contributions to make whatsoever.

Mr. **Wier**. So what I can give you is some specific advice, and consistent with what that costs you, you may accept or reject it, because it is going to be free.

One of the concerns I have with this hearing is that I think it has been interesting to listen to, but I don't think it has been very productive.

Mr. **Conyers**. You know, we get that feeling frequently in the subcommittee, and in the entire Congress.

Mr. **Wier**. The reason I don't think it has ben productive is I don't think you have been offered any concrete suggestions; I don't think you have dealt with specifics. I don't propose to waste your time or my time with reading the statement that you have before you.

What I suggest we do is to take a look at the guts of what this hearing is all about. And that means, one, should you even do anything, why should the Federal Government be involved, is there a need; and secondly, why have you come up with—I don't address this to you all individually but as a body of the Congress—with bills that you have reviewed, both in the Senate and the House, that I feel are totally inadequate.

I think they obviously have been well-intended, but I don't think they address the problems.

First of all, let me indicate that as attorney general of Delaware I have a unique position in that my office does all of the criminal prosecution in the State. There are no local attorneys, there are no states' attorneys. My background has been as a criminal trial lawyer for the last decade.

I have also had considerable experience in terms of drafting legislation. Our experience in Delaware, as the first witness indicated, was we have enacted statutes and they are attached to my statement. The statutes are the genesis of the legislation that my office has drafted and secured the enactment of in Delaware, dealing with sexual exploitation of children, and dealing with obscenity and dealing with the licensing of adult book stores and massage parlors.

It has been our experience in trying to prosecute under broad obscenity standards and prosecute under the restrictions that State prosecutors or the attorney general in Delaware have to labor under because of the fact that we simply do not have the mechanism, the States do not have the mechanisms for effectively prosecuting the evil you are concerned about.

The evil you are concerned about is the production of this type of material involving children in sexual activity.

That brings up the Federal Government. What specific efforts would the Federal Government be able to provide that the States are having trouble with.

First of all, as one of your witnesses testified, the cost, particularly in this area, when it is intertwined with the first amendment, the cost of prosecution is enormous from the State's point of view, because marshaled on the other side are the $30 million of the Larry Flynts and the multimillion dollars of the Hefners and other people.

Larry Flynt makes more money than Delaware has in its budget. So that effectively the Federal resources are necessary in terms of monetary response to secure adequate prosecution in the Federal courts for the producers, the manufacturers, and those who knowingly transport such filth in or through interstate or foreign commerce.

In addition, one of the problems that we have, obviously, because of interstate nature of the industry, which I think is recognized by this committee, is the inability of us basically through subpena power and through the cumbersome mechanism of the extradition laws, to effectively go very far beyond our borders.

The Federal Government, if there were a Federal crime such as attempted to be articulated in H.R. 3914, the House bill, the Federal Government, and your U.S. attorneys, could effectively, I think, utilize State or nationwide subpena power, and could effectively utilize, without resorting to the cumbersome extradition process, the return of individuals charged with a Federal crime.

As you know, they don't have to go under the extradition laws to bring someone charged with a Federal crime, for example, in California to Delaware. So there are real practical problems with State prosecution that the Federal Government must address itself to, and you must address yourselves to that problem by the enacting of legislation that is not done in haste, and that recognizes the obvious problems that we have discussed with the first amendment.

Let me specifically address myself, one, to some of the legislation that I think you should consider, and second, to a criticism of H.R. 3914.

But as I view the other legislation, the Senate bills and House bills, they essentially track the language of H.R. 3914. I suggest you consider amending your racketeering act to include along with your State violations, that is, extortion, bribery, et cetera, include violations of State child exploitation laws. That would be an easy amendment, it would enable the U.S. attorneys to act immediately, as they are now doing under the racketeering acts, but also I think it would provide an incentive for the States to enact legislation.

One of the problems you have is waiting for States to respond. That point was raised, I think, by Congressman Volkmer, why haven't all of the States enacted statutes.

And even assuming they all enact statutes like Delaware's, you have differing standards, differing zeal, you have a variety of different approaches that don't lend themselves to any type of consistent nationwide effort in an area that is nationwide, and that is the production of child exploitation materials.

I think you have to get away from calling it child pornography. As I state in my statement, I think it is incorrect to call it child pornography. We are not talking about obscenity, we are talking about the crime of using children for illegal sexual purposes, just like murder and the production of filming of that, and other recordation of those acts are crimes and should be crimes.

When they are embodied in material and then disseminated or sold, then you begin to bring in the first amendment. So the specific recommendation I would have is you look at your racketeering act.

Second, you look at section 1462 of the obscenity statute. It seems to me that if you want to amend the Federal act, S. 462 in particular that defines obscenity and talks about the transportation of it, that might be a superfluous act, because I think the dissemination of obscene materials that depict children are covered by those statutes. We have secured convictions in Delaware under our obscenity statute, which is attached to my statement, of individuals who sell or attempt to sell magazines involving solely young children.

The specific prosecution I am talking about is a magazine called Lollitots. I have a copy of that, but I will not display it.

Mr. CONYERS. Thank you.

Mr. WIER. I will not give it to the committee either because I am using it in 2 weeks in another prosecution.

But if the committee wishes to view it, I am sure I can arrange to have copies sent.

H.R. 3914, I think, is a very poorly drafted piece of legislation. I will tell you why. You are all familiar with it, I am sure.

First of all, one of the major problems I have with the act is it makes as a condition of liability the person who produces this stuff and makes it a condition that he knows, has reason to know, or intends that it be photographed or filmed and that it will be disseminated or otherwise affect interstate or foreign commerce.

That standard, first of all, is almost impossible for a prosecutor to meet. It is virtually impossible for your Federal or State prosecutors to prove that the person who in an isolated chain, if he is financing it or filming it or if it is the mother who permits her child to engage in that type of activity—and obviosuly we have that throughout the nation—it would be impossible to prove that those individuals knew, had reason to know, or intended it be disseminated in interstate commerce.

Second, that requirement is not necessary. You don't need it. The reason you don't need it is—and I indicate the case law in my statement—is that the basis of the Federal jurisdiction is obviously the transportation or dissemination of this type of material in or through foreign or interstate commerce, or affecting such commerce. That is a jurisdictional fact, and it is an element that has to be proved. But you don't have to use that as a condition of a substantive offense that you are regulating.

In the case I point to, and I am sure counsel on the committee are familiar with it, it was a prosecution for conspiracy to assault a Federal officer. There were two types of crimes in that case. It was a classic rip-off case, and a narcotics case.

I am referring essentially now to pages 8 through 13 of my statement. But it is *U.S.* v. *Feola*, 420 U.S. 671, 95th Supreme Court, 1255.

Bascally, what that case involved were two Federal undercover agents, who had a drug transaction with the defendants, and the defendants in that case were going to sell sugar—this is a common practice—to rip the agents off who were undercover, purporting it was heroin. If the agents weren't fooled, they were going to either shoot them or rob them of the purchase money, in any event.

One of the agents became alerted to their designs before the transaction was consummated, and he pulled a gun to prevent the murder of the other Federal officer, and lo and behold, these two guys who were going to enter into a drug transaction found themselves surprisingly charged with assaulting and conspiring to assault Federal officers.

The district court in that case, without objection, instructed the jury that it was not necessary, as an element of conviction, that the Government establish that the defendants knew that the agents were Federal officers, the only basis for Federal jurisdiction, it was conceded in that case.

Upon appeal the court of appeals reversed, saying that no, the defendants had to know or had to be charged with knowing that the officers were Federal. The U.S. Supreme Court reversed and said knowledge of the jurisdictional fact is not required and they remanded it for additional prosecution.

The same principle applies to this statute. So the first recommendation I have is to eliminate in section 2251 of H.R. 3914, or any other statute you are considering requiring, as a condition precedent to liability under the act, that the defendant know, have reason to know, or intend the jurisdictional aspects, that is, transportation.

Second, I think that your definition of prohibited sexual activity poses serious problems in that it prohibits children engaged in any other sexual activity. As has already been stated in testimony by Mr. Parrish, and others, there are real constitutional problems obviously with that vague definition.

For example, as I indicate in the statement, if a parent takes a Polaroid picture of his or her grandchildren kissing each other, and they send it to the grandparents in another State, that may well be a violation of 3914. Obviously therefore you should eliminate from your draft and from your hopefully final legislation that vague term.

Delaware has done that in its act, which deals with sexual exploitation.

I also have problems, as a prosecutor, with the definition of nudity, although we have the same definition in our act. I will not concede, therefore, it is unconstitutional. But I think you have real problems with it. I suggest you go to *Miller* v. *California*, and look at the "lewd exhibition of genitals" language in that and track that language in your statute.

In addition, I have got basic problems with the language of your act, 3914, which does not address the problem that you all are meeting here today to discuss, and that is it does not embrace all of the people who produce and manufacture this type of material. It only goes to an individual who causes or knowingly permits the child to engage in this prohibited activity, or the individual who photographs or films it.

Now photographing or filming it under this act is not enough, the guy who photographs it has to intend it is going to be distributed in interstate commerce, which goes back to my former point.

Clearly the guy who develops the film, clearly the guy who bankrolls the operation, may not be determined under this act to have caused or knowingly permitted the child to engage in a specific act.

In any event, the guy who holds the lights, the guy who develops the film, has not photographed or filmed it. So I ask a question: Why don't you in this act not only expand the type of recordation, but why limit it to photographs or films? Why not prohibit recordation in any fashion?

For example, what happens if there is a professional artist, or some other type of pictorial representation of such acts? That wouldn't be included under this act.

Would a video tape be included under the definition of film? I would suggest that you consider expanding the requirements in these acts to go broader than your knowing definition, which is pretty restrictive, as counsel knows, to include such states of mind as we have in the Delaware statute, which I put in the statement, such as reckless conduct, or criminally negligent conduct. Those are defined near the end of my statement. Expand your definition. If a parent or foster parent or guardian or anyone else recklessly or with criminal negligence permits such child to become involved in this material, they should be prosecuted and get away from the very restrictive "mens rea" requirement of knowledge.

Mr. CONYERS. How much more time do you need?

Mr. WIER. One second, with your permission. One final point. As a member of the executive committee of the National Association of Attorneys General, we met in Maryland last week prior to meeting with Judge Bell and others, and we are very concerned about this problem, as you are in the Congress. It clearly is a problem, it clearly exists, it clearly needs response, not only from the States, but from the Federal Government.

At our annual meeting in December I will introduce a resolution to the National Association of Attorneys General and I am on the subcommittee on crime of that association, and that resolution will do two things. First of all, it will engage the association, if passed, in an effort nationwide to secure the drafting and passage of a uniform law dealing with sexual exploitation of children, a model act. We propose that each of our States have either a draft model act or Delaware's act, or Federal legislation that is being considered.

Second, I would ask the association by resolution to make available its national resources, to work closely with this committee or any other body of Congress that is deemed appropriate, so that we can have a joint sponsor in drafting legislation and in pointing out the problem not only in your legislation, but in our State legislation.

So I think together we can make a dent. I think, the association and the Federal Government, Congress in particular, together we can respond to a problem that is not going to go away, and it is not going to be solved by Mr. Flynt's cavalier suggestion that you don't need legislation, you need to change people's attitudes.

Obviously it is not an either/or situation. So I think that the association will be receptive to that.

I appreciate the opportunity to appear here before you, and I welcome your questions.

[The prepared statement of Mr. Wier follows:]

STATEMENT OF RICHARD R. WIER, JR., ATTORNEY GENERAL OF DELAWARE

Mr. Chairman, and distinguished members of this important subcommittee of the United States House of Representatives, it is a matter of great importance that brings me before you:

As Attorney General of Delaware, I have the unusual position among my fellow attorneys general, with the single exception of my colleague in Rhode Island, to be solely responsible for all criminal prosecutions in my State, thus, there are no local prosecutors or State's attorneys in Delaware and, therefore, I have the obligation as the chief law enforcement official of Delaware to not only prosecute vigorously all those properly charged with violation of the State's criminal laws but also to ensure that those laws effectively deal with the changing face of crime.

During my three years as Attorney General, and before then as a Deputy Attorney General from 1968–1970 and State Prosecutor from 1970–74, I have continually initiated changes in Delaware's criminal code when the need for such action became apparent. Thus, I have drafted such diverse bills as Delaware's child abuse reporting act and her death penalty statutes.

As you know, the need to change State criminal law may arise from a myriad of things such as Federal or State decisions or a failure of the law to deal with new criminal activity. For example, when I began prosecuting in 1968 we had little problem with illegal drug activity in Delaware. Of course, that activity soon mushroomed as did our laws regulating it.

Most recently, we in Delaware have been faced with a new type of heinous criminal conduct that has been sweeping the Nation. That conduct involves the use of juveniles, many only three and four years old, in illegal and perverted sexual acts for the business of producing and distributing material depicting such acts throughout and into our Nation. Your Congressional Record is replete with articulate statements describing the existence and extent of this multimillion dollar racket, see *e.g.*, S8331–8338 (May 23, 1977); E2735–2737 (May 4, 1977); S6816–6813 (April 29, 1977); E2152 (April 7, 1977); S6065–6067 (April 20, 1977); E2483–4 (April 26, 1977).

As attorney general, I have directed my staff to initiate legislation to deal with this new menace and have thus secured the enactment of several important statutes designed to define and punish those who engage in what is generally, though incorrectly, termed child pornography. Thus, on July 15, 1977, the Delaware General Assembly enacted a new criminal statute "Relating to sexual exploitation of children and dealing in material depicting children engaging in sexual activity." That statute is attached to this statement as Exhibit A and your attention is respectfully directed to it.

As you can readily observe, this legislation focuses on those who not only finance, produce and film such material, it also prohibits *inter alia* the transportation, receipt for sale, sale, or other dissemination of such material writhin Delaware. As you can also observe, the act narrowly defines the type of sexual acts that are prohibited and imposes severe penalties on those convicted: 3-30 years for a Class B felony and such fine or other conditions as the Court may order: 2-20 years for a Class C felony and such fine or other conditions as the Court may order; and life imprisonment for a second or subsequent conviction of the offense of sexually exploiting a child.

In addition to this important statute, we secured amendments to Delaware's obscenity statutes and those amendments are attached hereto as exhibit B.

This statute seeks to not only keep obscene material from being produced, published, etc., it also seeks to keep such material out of the reach and view of minors and introduces an important concept that "Where the criminality of conduct depends on a child's being under the age of 12, subsection (A) (5) or under the age of 18, subsection(b), it is no defense that the actor did not know the child's age." Although this amendment does not deal specifically with the use of minors in pornographic materials, but rather with the dissemination of such material to minors, it is applicable to the sale, etc., of pornographic materials which show children. Based upon this statute, my office obtained a conviction based upon the sale of the magazine "Lollitots," which showed nude pictures of children. A copy of that magazine is attached to this statement. Delaware's definition of "obscenity" for these purposes tracks the *Miller* v. *California*, 413 U.S. 15, 37 L.ED. 2D 419, 93 S.CT. 2607 (1973) Test (11 *Del. C.* § 1364).

"Material is obscene if:

"(1) The average person applying contemporary community standards would find the material, taken as a whole, appeals to the prurient interests, and

"(2) The material depicts or describes:

"(a) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or

"(b) patently offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and

"(3) The work taken as a whole lacks serious literary, artistic, political or scientific value."

In addition, my office drafted a statute which was enacted into law last June that imposes rigid licensing requirements on adult book stores and massage establishments and thereby seeks to uncover the true identities of those behind such businesses. You will note that adult bookstore "shall mean any corporation, partnership, or business of any kind which has as part of its stock books, magazines, or other periodicals and which offers, sells, provides, or rents for a fee:

* * * * * * *

"(d) Any sexually oriented material which has as its principal theme the depiction of sexual activity by, or the lewd or lascivious exhibition of the uncovered genitals, pubic region, or buttock of, children who are or who appear to be under the age of 18."

A copy of that act is attached to this statement as exhibit C.

Notwithstanding this effort in Delaware to deal with this new menace referred to as child pornography, there is a vital need for Congress to act in regulating this menace as well. This need is derived from the interstate nature of the industry. Very often the children depicted in such material are nameless faces and bodies who cannot be identified by isolated state investigations. In addition, efforts to trace the location of the production center and the identity of the producers, photographers, etc., are limited by state boundaries which circumscribe the subpoena power, etc., of the state prosecutor. For example, "Lollitots" was purported to be published by one Delta Publishing Company located in Wilmington, Delaware. However, our investigation could only uncover the fact that the company was not located in Delaware. In addition, the numerous jurisdictions that would, of necessity, confront the problem would give rise to many different standards, penalties, etc., even assuming each state would enact a law to cover the subject. As an honorary life member, and past executive director and vice president of the National Association of Extradition Officials, I can attest to the fact that the extradition process would at best be cumbersome, as compared with the ability to move individuals charged with federal offenses in a more expeditious way.

Finally, the greater resources of the Federal Government are really needed to secure convictions in this area because of the nationwide nature of the business and the large amounts of money that can be marshalled, in court and out of court, fighting such prosecutions.

Any action you take, however, must not be taken in haste for the evil is too pervasive and the stakes too high to permit of anything but your best effort. I have reviewed the following legislation which has been introduced thus far—H.R. 3914, H.R. 3913, H.R. 5522, S.1011, S. 1040, S. 1585—and am disturbed by the major problems they pose and questions they leave unresolved.

Since most of the bills track the language of H.R. 3914 let me speak directly to that bill. Obviously, you all are familiar with the contents of that bill but I attach a copy to this statement for convenience.

One of the first problems I have with H.R. 3914 as drafted is that it requires the United States Attorney to prove as a condition of liability that the defendant "knows, has reason to know, or intends . . . . that any photograph or film depicting such act may be transported, shipped, or mailed through interstate commerce or foreign commerce or may affect interstate commerce or foreign commerce." This element is not only impossible to prove in most cases, it also is not necessary.

The evil to be prohibited is clearly the production of such material and its dissemination through interstate or foreign commerce or potential dissemination through such commerce. But that does not mean that *knowledge* of such dissemination is necessarily required. Certainly the interstate character of the transaction must be established for federal jurisdiction to attach but knowledge of the jurisdictional requirement should not, and indeed need not, be a condition precedent to liability. In *United States* v. *Feola*, 420 U.S. 671, 43 L. Ed. 2d 541, 95 S. Ct. 1255 (1975), the United States Supreme Court held that in a prosecution for conspiring to assault federal officers the government was not required to show that the defendants knew that the officers were federal—the basis of the federal court's jurisdiction. The court said (at 420 U.S. 696):

"To summarize, with the exception of the infrequent situation in which reference to the knowledge of the parties to an illegal agreement is necessary to establish the existence of federal jurisdiction, we hold that where knowledge of the facts giving rise to federal jurisdiction is not necessary for conviction of a substantive offense embodying a *mens rea* requirement, such knowledge is equally irrelevant to questions of responsibility for conspiracy to commit that offense."

Next, the act poses some constitutional problems which must be resolved. First, the act defines "prohibited sexual activity" to mean "any other sexual activity." This definition is extremely broad and may well be unconstitutionally vague. For example, under this definition parents who take Polaroid pictures of their children hugging or kissing each other and who then mail the pictures to the grandparents may be in violation of the act. The doctrine of *Ejusdem Generis* may not save this broad definition. Second, section 2252 raises serious first amendment problems. Under section 2252(a)(2) any person who sells a book with one picture in it depicting a child engaged in a prohibited act is guilty under the act. This statute would eliminate the tests of *Miller* and the protections of the first amendment as refined in *Miller*. Since the same standards for judging materials with adults in them are still applicable to those dealing with children, care must be taken in drafting legislation that can impact on first amendment freedoms. If the language of section 2252 were to include words modifying the material to include that "which contains an obscene depiction of a child engaging in a prohibited sexual act" then the statute may meet the *Miller* tests but may be superfluous in view of the prohibitions contained in 18 U.S.C. § 1462. Third, there does not exist any scienter requirement in section 2252(a)(2) and it would be my suggestion to add the word "knowingly" before the words "receives" and "sells."

The next problem I have with the bill is it does not effectively embrace all of those who are actively engaged in the making of such filth. This problem is caused in part by the words "causes" or "knowingly permits" in section 2251(a). Those who insulate themselves from the actual production process but finance the costs may not be construed as "causing" or "knowingly permitting" the child to engage in the specific act, even assuming one could prove they knew, had reason to know, or intended that the act be photographed or filmed and sent in interstate or foreign commerce. These words pose serious proof problems for the prosecutor. Is the person who holds the lights or develops the film guilty under the act? Certainly they have not "caused" or "knowingly permitted" the child to engage in the act nor have they photographed or filmed it. Subsumed in this question of liability is the further question whether "knowingly permit" imposes an affirmative obligation to prevent or stop the act. Is it a defense to this act that the actor reasonably believed the child to be over the age of 16? If not, I suggest language that would track the language of the Delaware statute, *supra*. You may also wish to consider whether you should punish those individuals who permit or cause—if those are your operational terms—the child to engage in such conduct either recklessly or criminally negligently. Delaware defines these states of mind as follows (11 *Del. C.* § 231):

"(a) 'Intentionally.' A person acts intentionally with respect to an element of an offense when:

"(1) If the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause that result; and

"(2) If the element involves the attendant circumstances, he is aware of the existence of such circumstances or believes or hopes that they exist.

"(b) 'Knowingly.' A person acts knowingly with respect to an element of his offense when:

"(1) If the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

"(2) If the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause that result.

"(c) "Recklessly." A person acts recklessly with respect to an element of an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

"(d) 'Criminal negligence.' A person acts with criminal negligence with respect to an element of an offense when he fails to perceive a risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation."

This filthy industry is not limited solely to producing and distributing photographs and films and there would appear no reason to restrict the statute in this regard. Recordation in any way or manner whatsoever is the evil to be prevented. Problems also arise with the words "depicting such act," since simulation of such acts is also prohibited. Thus, act perhaps should be defined or simulation should be defined in the act.

Clearly, the government and the states have legitimate police power interests to regulate and prohibit such conduct. Care must be taken that we draft legislation that will severely punish those who are responsible, in any form, for the creation of such material and its distribution. As a member of the executive committee of the National Association of Attorneys General, I know we as a group of law enforcement officials applaud your efforts and at our next annual meeting in December I will ask the association to give you or your colleagues any help you may desire to reach our mutual goal of combatting this new menace. Together, we can hopefully eliminate this evil and protect the youth of America who need us now more than ever.

Thank you for permitting me to attend this meeting and for the privilege of sharing my thoughts with you.

[H.R. 3914, 95th Cong., 1st sess.]

A BILL To amend title 18, United States Code, to prohibit the sexual exploitation of children and the transportation in interstate or foreign commerce of photographs or films depicting such exploitation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Child Abuse Prevention Act".

SEC. 2. The Congress enacts the provisions of this Act pursuant to the power of the Congress to regulate interstate commerce and foreign commerce.

SEC. 3 (a) Title 18, United States Code, is amended by inserting immediately after section 2236 the following new chapter:

"Chapter 110.—SEXUAL EXPLOITATION OF CHILDREN

"Sec.
"2251. Sexual abuse of children.
"2252. Transportation of certain photographs and films.
"2253. Definitions.

"§ 2251. Sexual abuse of children

"(a) Any individual who causes or knowingly permits a child to engage in a prohibited sexual act or in the simulation of such an act shall be punished as provided under subsection (c) if such individual knows, has reason to know, or intends—

"(1) that such act may be photographed or filmed; and

"(2) that any photograph or film depicting such act may be transported, shipped, or mailed through interstate commerce or foreign commerce or may affect interstate commerce or foreign commerce.

"(b) Any individual who photographs or films a child engaging in a prohibited sexual act or in the simulation of such an act shall be punished as provided under subsection (c) if such individual knows, has reason to know, or intends that any photograph or film made by such individual depicting such act may be transported, shipped, or mailed through interstate commerce or foreign commerce or may affect interstate commerce or foreign commerce.

"(c) Any individual who violates subsection (a) or (b) shall be fined not more than $50,000 or imprisoned not more than twenty years, or both.

"§ 2252. Transportation of certain photographs and films

"(a) Any individual who—

"(1) knowingly transports, ships, or mails through, or in such a manner as to affect, interstate commerce or foreign commerce any photograph or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act; or

"(2) receives for the purpose of selling or sells any photograph or film which has been transported, shipped, or mailed through, or in such a manner as to affect, interstate commerce or foreign commerce and which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, shall be punished as provided under subsection (b).

"(b) Any individual who violates subsection (a) shall be fined not more than $25,000 or imprisoned not more than fifteen years, or both.

"§ 2253. Definitions

"For purposes of this chapter:

"(1) The term 'child' means any individual who has not attained age sixteen.

"(2) The term 'prohibited sexual act' means—

"(A) sexual intercourse;
"(B) anal intercourse;
"(C) masturbation;
"(D) bestiality;
"(E) sadism;
"(F) masochism;
"(G) fellatio;
"(H) cunnilingus;
"(I) and other sexual activity; or
"(J) nudity; if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction.".

(b)(1) The table of chapters for title 18, United States Code, is amended by inserting immediately after the item relating to chapter 109 the following new item:

"110. Sexual exploitation of children .... 2251".

(2) The table of chapters for part I of title 18, United States Code, is amended by inserting immediately after the item relating to chapter 109 the following new item:

"110. Sexual exploitation of children .... 2251".

Sec. 4. The amendments made by this Act shall apply to acts or omissions occurring after the date of enactment of this Act.

Exhibit A

Sponsor Rep. Kelly, Oberle, Ferguson, Gilligan, Anderson, Wm. Brady, Sen. Cicione.

House of Representatives, 129th General Assembly, First Session—1977.

House Bill No. 468, June 15, 1977. An act to amend chapter 5, subchapter V, Title 11 of the Delaware Code relating to sexual exploitation of children and dealing in material depicting children engaging in sexual activity.

Be it enacted by the General Assembly of the State of Delaware:

Section 1. Amend § 1103, Chapter 5, Subchapter V, Title 11 of the Delaware Code by striking the catch line of said section in its entirety and by substituting in lieu thereof a new catch line to read as follows:

"*§ 1103. Definitions relating to children.*"

Section 2. Amend § 1103, Chapter 5, Subchapter V, Title 11 of the Delaware Code by adding thereto new subsections (d) and (e) to read as follows:

"(d) 'Child' shall mean any individual eighteen years of age or less.

(e) 'Prohibited sexual act' shall include:

(1) sexual intercourse;
(2) anal intercourse;
(3) masturbation;
(4) bestiality;
(5) sadism;
(6) masochism;
(7) fellatio;
(8) cunnilingus;
(9) nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction."

Section 3. Amend Chapter 5, Subchapter V, Title 11 of the Delaware Code by adding thereto a new section to be designated as § 1108 and to read as follows:

"*§ 1108. Sexual exploitation of a child; class B felony.*

A person is guilty of sexual exploitation of a child when:

(1) He photographs or films a child engaging in a prohibited sexual act or in the simulation of such an act.

(2) He finances or produces any motion picture which depicts a child engaging in a prohibited sexual act or in the simulation of such an act.

(3) He publishes a book, magazine, pamphlet or photograph which depicts a child engaging in a prohibited sexual act or in the simulation of such an act.

Sexual exploitation of a child is a class B felony."

Section 4. Amend Chapter 5, Subchapter V, Title 11 of the Delaware Code by adding thereto a new section to be designated as § 1109 and to read as follows:

"*§ 1109. Unlawfully dealing in material depicting a child engaging in a prohibited sexual act; class C felony.*

A person is guilty of dealing in material depicting a child engaging in a prohibited sexual act when:

(1) He knowingly transports, ships or mails within this State any magazine, photograph or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) He knowingly receives for the purpose of selling or sells any magazine, photograph or film which depicts a child engaging in a prohibited sexual act or in the simulation of such an act; or

(3) He knowingly distributes or disseminates by means of shows or viewings, any motion picture which shows a child engaging in a prohibited sexual act or the simulation of such an act. The possession or showing of such motion pictures shall create a rebuttable presumption of ownership thereof for the purposes of distribution or dissemination.

Unlawfully dealing in material depicting a child engaging in a prohibited sexual act is a class C felony."

Section 5. Amend Chapter 5, Subchapter V, Title 11 of the Delaware Code by adding thereto a new section to be designated as § 1110 and to read as follows:

"*§ 1110. Same; subsequent convictions.*

Any person convicted under the provisions of § 1109 who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be guilty of a class B felony. Any person convicted under the provisions of § 1108 who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be sentenced to life imprisonment."

SYNOPSIS

This bill prohibits the use of children in pornographic material and prohibits the distribution of such material.

EXHIBIT B

JULY 8, 1977.

HOUSE OF REPRESENTATIVES, 129TH GENERAL ASSEMBLY, FIRST SESSION, 1977

House bill No. 408 as amended by House amendment No. 1 and Senate amendment No. 3.

An act to amend title 11 of the Delaware Code by providing for a minimum sentence for a second obscenity offense.

Be it enacted by the General Assembly of the State of Delaware (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend Title 11, Delaware Code, by striking Section 1361, and inserting a new Section in lieu thereof as follows:

"1361. Obscenity

(a) A person is guilty of obscenity when he knowingly:

(1) Sells, delivers or provides any obscene picture, writing, record, or other representation or embodiment of the obscene; or

(2) Presents or directs an obscene play, dance, or performance or participates in that portion thereof which makes it obscene; or

(3) Publishes, exhibits or otherwise makes available any obscene material; or

(4) Posseses any obscene material for purposes of sale or other commercial dissemination; or

(5) Permits a person under the age of 12 to be on the premises where material harmful to minors, as defined by 11 *Del. C.* Section 1365, is either sold or made available for commercial distribution and which material is readily accesible to or easily viewed by such minors.

Any material covered by this subsection shall not be considered readily accessible to or easily viewed by minors if it has been placed or otherwise located five feet or more above the floor of the subject premises or if the material is concealed so that no more than the top three inches is visible to the passerby.

(b) Obscenity is a Class D Felony if a person sells, delivers or provides any obscene picture, writing, record, or other representation or embodiment of the obscene to a person under the age of 18, which notwithstanding the provisions of Chapter 42 of this Title shall be punishable by a minimum period of incarceration for 60 days, no portion of which may be suspended or reduced in any manner whatsoever. In all other cases obscenity is a Class A Misdemeanor.

(c) Notwithstanding the provisions of Chapter 42 of this Title, the minimum sentence for a subsequent violation of this Section for Class A Misdemeanor obscenity occurring within five years of a former conviction shall be a fine in the amount of $5,000 and imprisonment for a minimum period of 60 days, no portion of which may be suspended or reduced; provided, however, that where the defendant is a corporation, the fine shall be $10,000.

(d) Where the criminality of conduct depends on a child's being under the age of 12, subsection (a)(5) or under the age of 18, subsection (b), it is no defense that the actor did not know the child's age."

EXHIBIT C

JULY 8, 1977.

HOUSE OF REPRESENTATIVES, 129TH GENERAL ASSEMBLY, FIRST SESSION, 1977

House bill No. 407 as amended by House amendment Nos. 1, 2, 3, and 4, and Senate amendment No. 4.

An act to amend title 24 of the Delaware Code by providing for the licensing of massage establishments and adult book stores.

Be it enacted by the General Assembly of the State of Delaware.

Section 1. Amend Title 24 of the Delaware Code by adding thereto a new Chapter, to be designated Chapter 16, which new Chapter shall read as follows:

"Chapter 16. Massage Establishments and Adult Book Stores

widespread abuse of legitimate occupations and establishments, to wit, adult book stores and massage establishments. It is the further finding of the Legislature that existing criminal penalties for the foregoing offenses have been rendered ineffective by the active concealment of the identities of the individuals who create, control, and promote such businesses; by the failure of these individuals and businesses to exercise adequate control and supervision over the activities of their employees; and by the active promotion of prostitution and obscenity by these individuals and business for their own financial gain.

(18) "Sexually oriented material" shall mean any book, article, magazine, publication, or written matter of any kind, drawing, etching, painting, photograph, motion picture film, or sound recording, which depicts sexual activity, actual or simulated, involving human beings or human beings and animals; or which exhibits uncovered human genitals or public region in a lewd or lascivious manner or which exhibits human male genitals in a discernible turgid state, even if completely covered.

To the end of furthering the substantial and compelling interest of the People of this State in being free of the crimes of obscenity, prostitution and its companion offenses, and in order to promote the health, safety and welfare, the Legislature does hereby act.

1602. Definitions: As used in this Chapter:

(1) "Adult" shall mean a person who has attained the age of 18.

(2) "Adult bookstore" shall mean any corporation, partnership, or business of any kind which has as part of its stock books, magazines, or other periodicals and which offers, sells, provides, or rents for a fee:

(a) any sexually oriented material, and which business restricts or purports to restrict admission to adults, within the meaning of this chapter, or to any class of adults; or

(b) any sexually oriented material which is available for viewing by patrons on the premises by means of the operation of any type of movie machine or slide projector; or

(c) any sexually oriented material which has a substantial portion of its contents devoted to the pictorial depiction of sadism, masochism or beastiality; or

(d) any sexually oriented material which has as its principal theme the depiction of sexual activity by, or the lewd or lascivious exhibition of the uncovered genitals, pubic region, or buttock of, children who are or who appear to be under the age of 18.

This term shall shall not include a motion picture theater which is licensed pursuant to Title 30, Chapter 23 of the Delaware Code.

(3) "Applicant" shall mean the person in whose name or on whose behalf a license under this chapter is requested.

(4) "Bestiality" shall mean sexual activity, actual or simulated, between a human and an animal.

(5) "Commission" shall mean the Commission on Massage Establishments and Adult Book Stores.

(6) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

(7) "Licensee" shall mean the person to whom and in whose name a license is issued under this chapter.

(8) "Masochism" shall mean sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture or death.

(19) "Treat" shall mean to administer the services provided by a massage establishment as described by this section.

1603—Commission on Massage Establishments and Adult Book Stores:

(a) The Commission on Massage Establishments and Adult Book Stores is hereby established. The Commission shall consist of five members who shall be appointed by the Governor and who shall be residents of this State.

(b) The Governor shall appoint the five members of the Commission within 30 days of the enactment of this Act. Two members shall be appointed for two years and two members for three years. Upon the expiration of said terms the Governor shall appoint successors for terms of three years. The Chairman shall be designated by and serve at the pleasure of the Governor. In the event that a member of the Commission for any reason cannot complete his term of office, the Governor shall appoint another person to serve for the remainder of the term.

The Commission shall designate one of its members as Secretary-Treasurer. All members of the Commission appointed by the Governor under the provisions of this Chapter shall be made by and with the consent of a majority of all the members elected to the Senate.

(c) Within 60 days from the enactment of this Act, the Commission shall be prepared to carry out the duties imposed herein.

(9) "Massage Establishments" shall mean any business or enterprise which offers, sells, or provides, or which holds itself out as offering, selling, or providing massages which include bathing, physical massage, rubbing, kneading, anointing, stroking, manipulating, or other tactile stimulation of the human body, by either male or female employees or attendants, by hand or by any electrical or mechanical device, on or off the premises. This term shall not include the business or occupation of a chiropractor, chiropodist, podiatrist, barber, nurse, optometrist, cosmetologist, dentist, physician, physical therapist, or operator of a funeral establishment, who is certified, registered or licensed pursuant to Title 24, or a hospital which is licensed pursuant to Title 16 of the Delaware Code, or athletic coach or trainer.

(10) "Massagist" shall mean any person who performs massage services for a massage establishment, and shall include self-employed individuals.

(11) "Partner" shall include both a general and a limited partner.

(12) "Partnership" shall include both a general and a limited partnership.

(13) "Person" means a human being who has been born and is alive, and, where appropriate, a public or private corporation, an unincorporated association, a government, or a governmental instrumentality.

(14) "Principal stockholder" shall mean a person who owns equity securities of the licensee, whether voting or non-voting, preferred or common, in an amount equal to or greater than 10 percent of the total amount of equity securities of the licensee issued and outstanding.

(15) "Peace Officer" shall include police officers, the Attorney General and his Deputies and Assistants.

(16) "Sadism" shall mean sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death upon another person or animal.

(17) "Sexual activity" shall mean any act of sexual intercourse, masturbation, sodomy, cunnilingus, or any excretory function, or any fondling or other erotic touching of genitals, pubic region, buttock or female breast.

(d) Each member of the Commission shall receive as compensation the sum of thirty ($30.00) dollars per diem for each day or part thereof actually engaged in the discharge of his duties under this Act, and shall be reimbursed by the State Treasurer for reasonable expenses and costs incurred in traveling to and from meetings of the Commission.

(e) Three members of the Commission shall constitute a quorum to conduct business. In the absence of the Chairman, an Acting Chairman shall be designated by the quorum of Commissioners present.

1604. Duties and Powers:

(a) The Commisson shall issue, revoke, and suspend licenses for operation of massage establishments and adult book stores, and for the occupation of massagist in accordance with the provisions of this Chapter.

(b) The Commission shall meet regularly not less than one day per month or within 30 days, whichever comes sooner, after receipt of a completed application for a license, and shall conduct such special meetings and hearings as shall be necessary to implement the provisions of this Chapter.

(c) Each member of the Commission shall have the power to administer oaths, and to compel the attendance of witnesses and the production of documents and other tangible objects material to its proceedings by the issuance of subpoenaes to carry out the attendance of witnesses and the production of documents and other tangible objects material to its proceedings by the issuance of subpoenas to carry out the purposes of this Chapter.

(d) No findings of fact shall be made by the Commission except upon a hearing before at least three members, three of which shall concur in said finding. All findings of fact shall be written or recorded.

(e) All fees received by the Commission shall be paid to the State Treasurer in accordance with Chapter 61 of Title 29. All expenses of the Commission, within the limits of the appropriations made to it, shall be paid by the State Treasurer upon vouchers signed by the Secretary-Treasurer of the Commission.

(f) All documents filed with the Commission and all records maintained shall become public, official, and business records of the State of Delaware and shall be admissible in evidence in any judicial proceeding in this State in accordance with the Laws of Delaware applicable to the admissibility of such records.

1605. Records:

(a) The Commission shall maintain separate indexes relating to the licensing of massage establishments, massagists, and adult book stores.

(b) The Commission shall maintain an alphabetized or a computerized index containing the full name(s), including nicknames or aliases, residential address(es), business address(es), social security number, driver license number, a picture and the identity of any banks within or without the State wherein accounts are maintained, of every applicant and licensee under this Act. The same information shall be provided for any other person whose signature appears upon any document comprising an application for license submitted under this Act. Said index shall be kept current and shall indicate the eligibility of such persons as licensees under this Act, and whether the signatures of such persons on an application for license preclude the issuance of a license based thereon.

(c) In carrying out its resposibilities, the Commission may submit names of applicants and those appearing in applications to the Department of Justice for the purpose of a record check.

1606. License Requirement:

(1) No person shall engage in, carry on, or participate in the operation of a massage establishment, adult book store, or engage in the occupation of massagist without first having been issued a license therefore by the Commission. Violation of this section shall be fined not more than $500 or imprisoned not more than six (6) months, or both.

(b) Any person, and in the case of corporation this shall include its principal stockholders, Board of Directors, officers, and person engaged in the management of such establishment, who shall engage in, carry on or participate in the operation of a massage establishment or an adult book store in violation of this section shall be fined not more than $10,000 and imprisoned not more than six (6) months, or both.

(c) Any person engaging in, carrying on, or who participates in the operation of a massage establishment who is found to have upon the premises a massagist in violation of this section shall be fined not less than $2,500, which fine shall not be subject to suspension, nor more than $10,000. For the purposes of this section, neither arrest, prosecution or conviction of a massagist for violation of this section shall be necessary in order for liability to attach.

(d) A certificate, certified by a member of the Commission, that a diligent search of the Commission's records, those pertaining to licenses kept in conformity with the provisions of this Act, has failed to disclose the existence of a valid license for the massage establishment or adult book store in question shall be prima facie evidence of a violation of this section.

1607. Fee: Term of License:

(a) No license for the operation of a massage establishment under this chapter shall be issued unless the applicant thereof shall have paid an annual license fee of Two Hundred ($200) dollars plus a fee of Twenty-five ($25) dollars for each separate branch or business location.

(b) No license to engage in the occupation of massagist shall be issued under this chapter unless the applicant therefore shall have paid an annual license fee of Twenty-five ($25) dollars.

(c) No license for the operation of an adult book store under this chapter shall be issued unless the applicant therefore shall have paid an annual license fee of Fifty (50) dollors plus a fee of Ten ($10) dollars for each separate branch or business location; *provided*, however, that applicants who have paid for and obtained a license prior to the effective date of this Act pursuant to Title 30, Section 2905 of the Delaware Code shall pay no fee in addition thereto for issuance of a license under this Chapter. Nothing in this Chapter, however, shall be construed to affect or impair in any manner the requirements of Title 30 of the Delaware Code.

(d) Each license granted pursuant to this Act shall be for a period of one year and may only be renewed by making a new application in the manner provided in this Act.

1608. Transferability of License:

(a) Each license issued under this Chapter shall be for the sole use and benefit of the licensee to whom it is issued and shall not be transferable.

(b) Whoever intentionally uses or permits the use, or attempts to use or permit the use of a license issued under this Chapter by or on behalf of a person other than the licensee to whom said license shall be issued shall be fined not more than Five Hundred ($500) dollars, or imprisoned for not more than six (6) months, or both.

1609. Form and Content of Licenses:

(a) Every license issued under this Chapter shall be signed by the signature or by the facsimile signature of the Secretary-Treasurer of the Commission, shall bear in bold letters the date of issuance and termination, and shall state the name and adress of the licensee.

(b) Every license for the operation of a massage establishment or an adult book store shall describe the nature of the business or enterprise as "massage establishment" or "adult book store," and the location of the premises at which such business is authorized. Where the licensee is a corporation, the license shall state the name and address of said corporation's registered agent in this State, and the name of its registered agent at such address.

(c) Every license issued to a massagist shall bear the photograph of the licensee.

1610. Place of Business specified in License: Change of Location: Penalty:

(a) No license issued under this Chapter shall authorize the licensee to engage in or carry on the business of operating a massage establishment or an adult book store in any place other than the premises set forth in such license. If a licensee changes the location of his place of business during the period for which the license is issued, the license shall be amended by making application in accordance with the provisions of this Act in making a new application, to authorize business at the new location, *provided* said business is otherwise permitted at the new location by applicable law and ordinance.

(b) Any person, and in the case of a corporation this shall include its principal stockholders, Board of Directors, officers, and persons engaged in the management of such establishment, who is the holder of a license issued under this Act and who engages in, carries on, or participates in the operation of the business of operating a massage establishment or an adult book store at a place other than that authorized by said license shall be fined not more than Five Hundred ($500) dollars, or imprisoned for not more than six months, or both.

1611. Display of License: Penalty:

(a) Every person licensed to operate a massage establishment or an adult book store under this Chapter shall display each license in a conspicuous manner on the premises for which the license shall have been issued.

(b) Every massagist licensed under this Chapter shall have in his possession during the course of performance of services as a massagist, and while on the premises of a massage establishment, and shall display upon request of a peace officer, the license issued under this Chapter.

(c) Violation of this section shall be punished by a fine of not more than One Thousand ($1,000) dollars.

1612. Application for License: Massagist: No license to engage in the occupation of massagist shall be issued under this Act unless the applicant has executed and filed with the Commission an application for license which shall include:

(1) His full name(s), includng nicknames or aliases, residential address(es), place(s) of employment, including address(es) and phone number(s), social security number, date of birth, driver license number, and a photograph of the applicant taken within 30 days of application.

(2) His sworn statement that he has never been convicted of any of the following offenses: lewdness, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape, or sodomy, in this State or any other State or jurisdiction within three years of the date of application.

(3) A letter of certification of a physician stating that the applicant has been examined and found free of communicable diseases as of a date not more than thirty days prior to submission of the application.

(4) A copy of the applicants fingerprints on a Delaware State Police fingerprint card.

1613. Application for License: Massage Establishment and Adult Book Store:

(a) No license for the operation of a massage establishment or an adult book store shall be issued under this Chapter unless the applicant has executed and filed with the Commission an Application for License under oath on a form prepared by the Commission which is in compliance with this Chapter.

(b) Every Application for License for the operation of a massage establishment or an adult book store shall state the full name(s), of the applicant appearing pursuant to Section 1615 of this Act, including nicknames or aliases, residential address(es), place(s) of employment, including address(es) and phone number(s), social security number, date of birth, drivers license number, and a photograph of the applicant taken within thirty days of the application, Federal Employer's Identification Number, and address of the premises for which the application for license is made. Each application shall further provide the full name(s), including nicknames and aliases, residential address(es), place(s) of employment, including address(es) and phone number(s), social security number, and a recent photograph taken within thirty days of providing this information to the Commission, of the person(s) to be primarily responsible for the day to day management of the massage establishment or adult book store.

(c) Where the applicant is a corporation, no license shall be issued unless there first be filed with the Commission, as part of the Application of License:

(1) a copy of the certificate of incorporation certified by the Secretary of State of the state of incorporation; and

(2) where the applicant is a foreign coporation within the meaning of Title 8, Section 371 of the Delaware Code, a copy of the certificate of the Secretary of State prescribed by subsection (c) of that section; and

(3) a certificate which shall bear the full name(s), including nicknames or aliases, place(s) of employment, including address(es) and phone number(s), social security number, date of birth, drivers license number, and a photograph taken within thirty days of application of every director, officer, and principal stockholder of the applicant, and each such signature shall be separately witnessed and acknowledged by a notary public of the district of execution; and

(4) the names and addresses of all holders of stock of the applicant as of a date thirty days or less prior to the date of application, which shall be certified as true and correct by an authorized director or officer of said corporation.

(d) Where the applicant is a partnership or other unincorporated association, no license shall be issued unless there is first filed with the Commission, as part of the application for license, a certificate which shall bear the full name(s), including nicknames or aliases, signature, place(s) of employment, including address(es) and phone number(s), social security number, date of birth, drivers license number, and a photograph taken within thirty days of application of every partner or member, and each such signature shall be separately witnessed and acknowledged by a notary public of the district of execution.

(e) An application for license for the operation of an adult book store shall include a certificate stating the full name(s), including nicknames or aliases, signature(s), residential address(es), place of employment, including address(es) and phone number(s), date of birth, social security number, drivers license number, and a photograph taken within thirty days of application of the person or persons who shall be responsible for the selection or procurement of all sexually oriented material for each such establishment and each such signature shall be separately witnessed and acknowledged by a notary public of the district of execution. This subsection shall not be construed to preclude the responsibility of any other person or persons for the procurement of sexually oriented materials.

1614. Form of Signature:

No signature of an applicant or license, or of any director, officer, principal stockholder or employee of an applicant or licensee, or of any partner associated with an applicant or licensee, which is required to be affixed to any document filed under this chapter, shall be a facsimile signature.

1615. Personal Appearance Required:

(a) No license shall be issued under this chapter except upon personal appearance of the applicant before a member of the Commission. The applicant shall affix his signature and social security number to the Application for License in said member's presence and shall acknowledge under oath that said application for license is his act and deed and that the facts stated therein are true.

(b) Where the applicant is a corporation, the provisions of subsection (a) of this section shall be satisfied by the appearance, signature, and social security number of a director on behalf of the corporation in the same manner. Where the applicant is a partnership or other unincorporated association, the provisions of subsection (a) shall be satisfied by the appearance, signature and social security number of a general partner or member on behalf of the applicant.

1616. Grounds for Denial of License:

(a) The Commission shall issue a license for the operation of an adult book store to every applicant who shall have satisfactorily completed and filed an Application for License as required by this chapter and shall have paid the required fee.

(b) No license to engage in the occupation of massagist shall be issued to any person convicted of any of the following offenses: lewdness, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape or sodomy, in this State or any other State or jurisdiction within three years of the date of application.

(c) No license for the operation of a massage establishment shall be issued under this chapter:

(1) To any person convicted within three years of the date of application of any of the following offenses: lewdness, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape or sodomy, in this State or any other State or jurisdiction; or

(2) To any person who formerly held a license for the operation of a massage establishment under this chapter, which license was revoked pursuant to Section 1617 of this chapter, for two years following revocation; or

(3) To any person who was an officer, director, or principal stockholder of a corporation, or a partner or member of a partnership or other unincorporated association, which was licensed as a massage establishment and which license was revoked pursuant to Section 1617 of this chapter for an offense or violation committed by anyone while said person served in that capacity, for two years following revocation; or

(4) To any person on the basis of an Application of License which bears the signature of any person specified in subsection (c)(1) of this section who has been convicted within three years of the date of application of any of the crimes set forth in subparagraph (c)(1) of this section; or

(5) To any person on the basis of an Application for License which bears the signature of any person specified in subsections (c)(2) or (c)(3) of this section, for two years following revocation.

1617. Grounds for Revocation of License:

(a) The license for the operation of an adult book store shall be revoked for the following reasons:

1. The intentional misrepresentation or omission of any material fact required to be filed pursuant to this Act; or

2. The transfer of a license in violation of Section 1608(a) or 1610(a) of this Act; or the failure to comply with the provisions of Sections 1623 or 1624 of this Act.

Nothing provided herein shall preclude the licensee from applying for a new license pursuant to the provisions of this Act. The person or persons responsible for any intentional misrepresentation or omission of any material fact required to be filed pursuant to this Act shall be fined $1,000 and imprisoned for thirty days, or both.

For the purpose of this subsection, a fact is deemed "material" when it could have affected the decision as to whether to grant or deny an application for license.

(b) A license to engage in the occupation of massagist shall be revoked for a period of two years upon the conviction of the licensee for any of the following offenses, including conspiracy to commit any of the following offenses: lewdness, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape, or sodomy, in this State or any other State or jurisdiction.

(c) A license for the operation of a massage establishment shall be revoked for a period of two years:

(1) Upon conviction of the licensee for any of the following offenses, including conspiracy to commit any of the following offenses: lewdness, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape, or sodomy, in this State or any other State or jurisdiction.

(2) Upon a conviction of any director, officer, principal stockholder, or employee of the licensee or of a partner associated with the licensee for any of the following offenses, including conspiracy to commit any of the following offenses: lewdness, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape, or sodomy, in this State or any other State or jurisdiction, occurring on the licensed premises.

(3) Upon conviction of any director, officer, principal stockholder, or employee of the licensee, or of a partner associated with the licensee for any of the following offenses, including conspiracy to commit any of the following offenses: lewdness, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape, or sodomy, in this State or any other State or jurisdiction, not occurring on licensed premises, where said director, officer, principal stockholder, partner, or employee, at the time of the conduct constituting the offense, was off the premises at the request or direction of the licensee for the purpose of furthering the business of the licensee.

1618. Suspension of License to Operate Massage Establishment or Act as a Massagist.

(a) A license for the operation of a massage establishment shall be suspended for a period of sixty days upon conviction of the licensee for a violation of Section 1620 of this Act.

(b) A license to engage in the occupation of massagist shall be suspended for a period of two years upon conviction of the licensee for a violation of Section 1620 of this Act.

1619. Notice and Hearing:

(a) The Commission shall not deny, suspend or revoke any license issued under this Act, or deny any application for license thereunder, except after a hearing where the applicant or licensee has been given at least twenty days notice in writing, specifying the reason or reasons for such denial, suspension or revocation, and the date of the hearing. Notice for the purpose of this section shall be as provided by the Superior Court Rules of Civil Procedure.

(b) Any hearing held pursuant to this Act shall be at such time and place as the Commission shall prescribe, but no later than twenty days after receiving notice. Failure of the person or persons to appear after receiving notice shall constitute a waiver of the right to appear at said hearing.

(c) Hearings shall be before a panel of no less than three Commissioners and the applicant or licensee shall be permitted the assistance of counsel at his own expense, to present witnesses in his own behalf and to cross-examine witnesses against him. The proceedings shall be recorded either electronically or strenographically. The Commission shall make specific findings of fact based upon a preponderance of the evidence upon the concurring vote of no fewer than three Commissioners. The Commission shall give written notice, accompanied by its findings of fact and conclusions of law, of its action within ten days of said hearing.

(d) The applicant or licensee shall have the right of appeal to the Superior Court upon filing notice of appeal within twenty days of the decision of the Commission. Such review shall be on the record and shall not be *de novo;* and the cost of transportation shall be borne by the appellant.

1620. Prohibited Acts. No massage establishment shall:

(a) Permit a massagist in its employ to treat a patron of the opposite sex; or

(b) Permit a massagist in its employ to treat a patron while pubic area, buttocks, or female breasts of either massagist or patron are not fully covered; or

(c) Permit a massagist in its employ to treat the genitals of a patron.

(d) No massage parlor shall be located on the premises or have an adjoining door to an establishment that sells alcoholic beverages.

A violation of this section by either a massage establishment or a massagist shall be punished by a fine in the amount of $1,000 or by imprisonment for not more than thirty days, or both.

1621. Records; Inspection: (a) Every massage establishment which is licensed under this chapter shall maintain on the premises and keep current a record of all massagists in its employ, a record of all massagists who have been employed after the effective date of this chapter, and a record containing the names and addresses of all customers, the date of attendance and the name of the massagist.

(b) Every adult book store which is licensed under this chapter shall maintain on the premises a record which shall state the name and address of every person, distributor, wholesaler or publisher from whom said book store has received any sexually oriented material, and the date such material was received, for purposes of sale, exhibition or dissemination on the premises after the effective date of this chapter.

(c) All records which are required to be maintained pursuant to this section shall be subject to inspection on demand by any peace officer or by the Commission or any member thereof.

(d) Violation of this section shall be punished by a fine of not more than Two Hundred ($200) dollars or by imprisonment for not more than six months, or both.

1622. Severability. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter shall be severable.

1623. Change of Daily Management. A massage establishment or adult book store shall notify the Commission in writing within ten days of any change, containing the full name(s), including nicknames or aliases, residential address(es), place(s) of employment, including address(es) and phone number(s), social security number, date of birth, driver license number, and a photograph taken within thirty days of notification, of any change in the identity of the persons identified pursuant to Section 1613 (b) and (e) of this Act.

A violation of this section shall be punishable by a fine in the amount of $1,000.

1624. Retroactive Application. The provisions of this Act, except as provided in Section 1607(c) of this Act, shall apply with equal force and effect to businesses and enterprises in existence prior to the effective date of this chapter and to those undertaken thereafter. The information required of all applicants hereunder shall be supplied to the Commission by any business subject to the provisions of this Act previously licensed pursuant to Title 30, Section 2905 of the Delaware Code within twenty days after the effective date of this Act if such business has more than ninety days remaining on its then existing license .

1625. Inspections. The premises at which the business of a massage establishment is carried on shall be subject to periodic inspection by the State Board of Health upon reasonable notice to said establishment for the prevention of the spread of communicable diseases.

1626. Rules and Regulations. The Commission shall have the power to make such rules and regulations not inconsistent with the law as are necessary for the performance of its duties.

1627. Offenses. Unless otherwise provided, all violations of this Act are misdemeanors.

1628. Jurisdiction. Exclusive jurisdiction for all criminal violations of this Act shall be in the Superior Court.

1629. Words of Gender or Number. Unless the context otherwise requires, words denoting the singular number may, and where necessary, shall be construed as denoting the plural number, and words denoting the plural number may, and where necessary, shall be construed as denoting the singular number. and words denoting the masculine gender may, and where necessary, shall be construed as denoting the feminine gender or the neuter gender.

Section 2. The provisions of this Act shall become effective ninety days after all members of the Commission on Massage Establishments and Adult Book Stores have been appointed by the Governor and confirmed by the Senate.

HOUSE BILL No. 407 SYNOPSIS

1. Establishes a Commission on Massage Parlors and Adult Book Stores.
2. Provides for the licensing of massage parlors and massagists and adult book stores.
3. Requires the establishing and maintaining of indexes of accurate information of individuals licensed.

DETAILED SYNOPSIS

I. Commission on massage parlors and adult book stores

A. The Commission shall consist of five (5) members appointed by the Governor.
   1. H. A. 1 adds "with the advice and consent of the Senate".
   2. Only three commissioners shall sit at any given time.
   3. Three members shall constitute a quorum.
   4. Commissioners shall receive $30.00 per diem.

B. The Commission shall issue, revoke and suspend licenses for the operation of massage establishments and adult bookstores and for the occupation of a massagist.

C. The Commission shall meet regularly not less than one day per month or within 30 days after receipt of a license application.

D. All findings of fact shall be made in a hearing before three members and at least two shall concur in said findings.

E. The Commission shall establish and maintain indexes of accurate information on individuals licensed.

1. Separate indexes shall be maintained relating to the licensing of massage establishments, massagists and adult bookstores.

(a) Computerized indexes shall include a picture, along with the usual application information, of every applicant and licensee.

(b) Names of applicants may be submitted to the Dept. of Justice for a record check.

II. The licensing of massage parlors and massagists and adult bookstores

A. Licenses shall be required for the operation of a massage establishment, an adult bookstore or for a massagist.

B. Persons operating as a massagist without a license shall be fined not more than $500 or imprisoned not more than 6 months or both.

C. Corporations operating a massage establishment or an adult bookstore without a license *shall* be fined up to $5,000 or imprisoned up to 6 months or both.

D. Any person involved in the operation of a massage establishment found to have an unlicensed massagist *shall* be fined *not less* than $2,500, *not subject to suspension* nor more than $10,000.

E. A certificate, certifying the lack of a valid license, submitted by a commissioner *shall* be prima facie evidence of a violation.

F. License-Fees:

1. Annual license fee for a massage establishment shall be *$200* and *$25* for each separate branch.

2. Annual license fee for adult bookstores shall be *$50* and *$10* for each branch.

3. Annual license fee for a massagist shall be *$25.00*.

4. Licenses may be renewed annually by making a *new* application.

5. Licenses may *not* be transferable.

G. License requirements and penalties for violations:

1. Any operator of a massage establishment or adult bookstore wishing to change the location of his business must have his license proper amended.

Penalty for operating at an unauthorized location shall be not more than $500 or imprisonment for not more than six months or both.

2. Licenses for a massage establishment or an adult bookstore must be conspicuously displayed.

Massagists must have their license in their possession during the performance of their services and shall display the license upon request of a peace officer.

Violaters of this section *shall* be fined not more than $1.000.

3. Massagists must include with their application a sworn statement that they have not been convicted of sex-related offenses including lewdness, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape or sodomy within three years of application and a statement from their physician stating applicant is free of communicable diseases.

4. Corporations and partnerships shall file with their applications:

(a) a certificate of incorporation

(b) certificate bearing the usual application information and a *photograph* of every director, officer and stockholder (or partner of the applicant and separately witnessed signatures.

5. An application for license for the operation of an adult bookstore shall include a certificate giving the usual information and a *photograph of the person or persons responsible for the procurement of all sexually oriented material for each such establishment.*

6. Licenses shall be issued only upon the personal appearance of the applicant before a Commissioner.

H. Denial of a license:

1. Denial of a license shall be made to a massagist or a massage establishment where the applicant has been convicted of sex-related offenses within three years of application.

2. Denial shall be made to a massage establishment whose license has been revoked for two years following revocation.

I. Grounds for Revocation of License and Penalties

1. Licenses shall be revoked for intentional misrepresentation or omission of material fact in the filing of applications.

2. The penalty for misrepresentation or omission of material fact *shall* be a fine of $1,000 and imprisonment or both.

3. Licenses shall be revoked for massagists and licensee of massage establishments upon conviction *including conspiracy* to commit sex related offenses mentioned above.

J. Prohibited Acts and Penalties:

1. No massagists may treat a patron of the opposite sex.

2. No massagist may treat a patron while pubic area, buttocks, or female breasts of either massagists of patron are not fully covered.

3. No massagists may treat the genitals of a patron.

4. Violation of this section shall be a fine in the amount of $1,000 or by imprisonment for not more than thirty days or both.

5. Licenses to engage as a massagist or operate a massage establishment shall be suspended for a period of sixty days upon conviction of violation of this section.

K. Hearings:

1. Panels of three commissioners shall hear denial, suspension, revocation of license cases.

2. The Commission shall give written notice accompanied by its findings of fact and conclusions of law of its action within ten days.

L. Other provisions:

1. Massage establishments shall keep current records of all massagists in its employ.

2. Every adult bookstore shall maintain records of every distributor, wholesaler, etc. from whom they received any sexually oriented material and the date received.

3. Failure to maintain accurate records shall be punishable by a fine of not more than $200 or by imprisonment for not more than six months or both.

4. The provisions of this Act shall apply RETROACTIVELY to businesses in existence prior to the effective date of this Chapter.

5. Massage establishments shall be subject to periodic inspection by the State Board of Health for the prevention of the spread of communicable diseases.

Mr. CONYERS. Thank you, Mr. Attorney General. We are going to consider this carefully, and I am anxious to have a member of the subcommittee or a member of our staff stay in touch with the operation of your Attorneys General Association. I think that would be very helpful, especially with your cooperation with the Department of Justice.

I appreciate your oral testimony and we will, without objection, incorporate your prepared statement into the record. We do have one final witness, a prosecuting attorney from Illinois, who I think will have a statement that is consonant with some of your views that we will want to hear.

I am interested in learning if you had any problem in identifying, in the Lollitots prosecution, the proof that the child was under the age of 16?

A number of prosecutors have pointed out that sometimes gets to be a difficult problem.

I am also interested to find out if you have had any success in the licensing of adult book stores, which is a problem in Detroit, and other parts of Michigan, perhaps in thousands of other places across the country.

Mr. WIER. Specifically, I would suggest that you consider in your legislation stating that child shall mean anyone under the age of 16, and I would respectfully suggest you may want to raise that to 18, because a lot of States define a child as under 18.

By anyone who is under the age, or appears to be. That is the way the Delaware law reads. That solves a lot of prosecution problems. And we have not had problems with that.

Second, with respect to the licensing statute, which I think is a major step forward in Delaware, because it incorporates the concept of civil response like your zoning cases, to the problem of adult book stores, and massage parlors.

The answer is we haven't had any experience under that because the definitions of the act, and the operative sections of the act, the Governor has to appoint a commission that will regulate the licensing of these establishments. He was a month and a half late in doing that, he has just done it, and the Senate must then convene and confirm those members, and then the act takes effect 90 days after that is all accomplished. So the act was enacted in July, it will probably take effect in November, and next year at this time I can probably give you a better idea of how it is working.

Mr. CONYERS. Is something like that working in any other States that you might be aware of through the Attorneys General Association?

Mr. WIER. I can tell you from my own opinion that no other attorney general's office has been involved in this type of legislation for a variety of reasons. Basically not because of lack of zeal, but because most of them don't have any criminal prosecution responsibility, they are not on the front line. I do know they are all concerned.

To my knowledge this act is the first of its kind in the Nation.

Mr. CONYERS. Thank you.

Mr. VOLKMER. Would the chairman yield?

Mr. CONYERS. Certainly.

Mr. VOLKMER. There are only two attorneys general in the United States, is that correct, that solely have prosecutorial powers within their State?

Mr. WIER. Rhode Island and myself.

Mr. VOLKMER. Are there other States in which the attorney general has concurrent prosecutorial powers, along with the local county or district, or do the rest of them rest solely with the district circuit or what-have-you?

Mr. WIER. It takes a variety of forms. Most attorneys general do have criminal prosecution powers, but it is defined in terms of intervening or superseding the local prosecutor. This was done in North Carolina recently at my request by Attorney General Edmundson, when he took over a local prosecution.

In many States that is permitted either by statute or by constitution. In Alaska, the attorney general does have broad prosecution powers, but not to the extent that we do.

Mr. VOLKMER. There are some States where he does have none?

Mr. WIER. That is correct. In fact, in Tennessee, Larry Parrish just told me before the hearing, the attorney general apparently has no criminal powers at all, prosecution powers.

Mr. VOLKMER. It is the same in Missouri.

Mr. CONYERS. Mr. Ashbrook.

Mr. **Ashbrook.** Thank you, Mr. Chairman. I certainly welcome your suggestions. I, like to many, have introduced a piece of legislation and tried to put together an answer. Mine is H.R. 8778. I see we have answered three of the questions you raise and we have fallen short on two of the others.

Getting to the specific definitions, I know in my definitions I knock out the item J that you referred to, the "other sexual acts," and "nudity." Otherwise, they would pretty well stand.

Is it your belief that Federal legislation should not include I and J categories, not necessarily because of any personal belief, but because of constitutional problems?

Mr. **Wier.** You have got the doctrine of ejusdem generis. That doctrine may save I. My recommendation is take it out.

Mr. **Ashbrook.** In my legislation I have. I hoped we would come up with something that would follow that suggestion. I guess I am impressed, although I am not sure I am totally convinced on your argument we should take out "if such person knows or has reason to know" et cetera. I certainly follow your argument as far as the difficulty that gives to a prosecutor.

Do you maintain it makes it virtually impossible to prove that someone knows or has reason to know a photograph or film would be used. Is that your problem?

Mr. **Wier.** My problem is you don't need it. And one thing I have learned in drafting legislation, you are more of an expert than I am——

Mr. **Ashbrook.** No; I wouldn't say that.

Mr. **Wier.** It is like in trying a case, you don't over-try a case. You don't need to put in something as a substantive element of offense that you don't need to. But the point is I think it would be extremely difficult to convict. At the very least I think the more isolated the individual is to the particular event, that is, if he is the owner of a corporation that is bank-rolling it, or if he is in another State, I think it would be difficult to be able to establish beyond a reasonable doubt, which is the standard, and convince 12 people beyond a reasonable doubt that he knew, intended to know, or intended or had reason to know it would be disseminated. I think you would have problems.

Mr. **Ashbrook.** You don't think we will have any trouble getting Federal jurisdiction by knocking that language out?

Mr. **Wier.** No; I don't. But you have to be careful of what you say and do in terms of how it evidences your congressional intent.

For example, in the case I cited in the statement, the Federal officer case, the Supreme Court turned to a letter written by the Attorney General of the United States to a committee of Congress, asking them to enact legislation to protect Federal officers. They pointed to that specific language as evidence of congressional intent.

So I think you have to be pretty careful because you may be circumscribed. If you intend the jurisdictional aspect of the bill to be a substantive element of the offense, you better say it. If you don't, you also better say that.

Mr. **Ashbrook.** One question on the area of distribution. I guess there would be two sections to it. Your suggestions on racketeering, does the racketeering statute go to the problem of distribution? It would be my feeling you would have a hard time getting the distribution under the racketeering act.

Parenthetically, on the *Lollitots* case, are you making any of the prosecution based on the distribution of material, or is it just on the fringe showing of it or what? How did you tie the distribution aspect into racketeering?

Mr. Wier. Let me answer your last question first. The *Lollitots* case does not involve distribution.

Mr. Ashbrook. Have any of your cases involved distribution?

Mr. Wier. Well, it involved the sale. But the prosecution was under the obscenity statute and a jury applying the Miller test concluded that the magazine was obscene.

You will note also, and I won't read it, but you will note also in our legislation that we make knowledge of the child's age, where the offense depends upon the child's age, we make it no defense, it is no defense if the actor did not know. That answers one of the problems previously posed, what happens if the person reasonably believes that the child is over 16 or over 18, and in fact the child turns out not to be. Some 15-year-olds look a lot older than 15; and some 13-year-olds look a lot older than 16, but it is no defense.

Lollitots was based on our obscenity statute. One of the problems we have in this area which goes back to why Congress should really get involved, and you have heard this before, is the difficulty we have of tracing people behind it, beyond our borders. And our prosecutions have demonstrated this, particularly where you have a corporation.

In one case we had, we prosecuted the corporation, and I mean indicted the directors of the corporation, it was Corporation X, and the corporation and the defendants came into court and said "Look, Corporation X has been defunct for *x* number of years or months or whatever, we dissolved that." And we had to go back and sure enough, on the retail license it was Corporation Y.

Our licensing bill, you should look at that, because that takes care of that situation. That may help us in terms of the distribution and in terms of the sale point.

With respect to the racketeering point, if you use interstate commerce in violation of the State laws, which is extortion and bribery, take a look at the mail fraud statutes. I am a State prosecutor, and the U.S. attorneys can probably tell you better. We don't deal with these cases. When I was with the U.S. Attorney's office, all we did was migratory bird cases. I am not that familiar with your mail fraud statutes, but they are pretty broad. I think you can consider amendments to them, if you have problems with distribution on the racketeering statute.

Mr. Ashbrook. Thank you.

Mr. Conyers. Mr. Ertel.

Mr. Ertel. Thank you for your information. I have no questions.

Mr. Conyers. Mr. Volkmer.

Mr. Volkmer. No, I have no questions, I just want to thank you for taking your time to be here and I congratulate you on your work. It is very informative. I think it will be helpful in drafting legislation.

Mr. Conyers. The subcommittee supports Mr. Volkmer's commending you. Did you identify your assistant?

Mr. WIER. Yes, Charles Meuse. He prosecuted the *Lollitots* case, he drafted the statutes that I have talked about, and in 2 weeks, hopefully, we will get another conviction in another *Lollitots* case.

Mr. CONYERS. Thank you for joining us. You have proved that good ideas can come from small States.

Mr. WIER. And small people.

Mr. CONYERS. Thank you.

Our final witness today is First Assistant County Attorney of Winnebago County, Ill., Mr. Robert Gemignani.

TESTIMONY OF ROBERT G. GEMIGNANI, FIRST ASSISTANT COUNTY ATTORNEY, WINNEBEGO COUNTY, ILL.

Mr. CONYERS. Mr. Gemignani has been involved in a number of prosecutions involving sex crimes and major homicides. We thank you for your patience, sir. In an original draft of the order of witnesses, you were to have been first instead of last, if that is any consolation.

We do appreciate your being here and we have your statement, it will be introduced into the record without objection, and that will allow you to make your presentation in your own way.

Mr. GEMIGNANI. Thank you, sir. I can understand why I am last, considering the stature of my predecessors.

Gentlemen, I can offer you very little other than some grassroots suggestions.

Our county is not that big, and I don't involve myself in some of the problems that my predecessors here have indicated. But I don't apologize for my work.

Let me say this: We have no problems whatsoever convicting people engaged in sexual activity with children in our State. Our statute is progressive, it is succinct, right to the point. If someone engages in intercourse, lewd fondling, cunnilingus or felatio with a child under the age of 16, he is subject to prosecution and subject to 4 years in the penitentiary or more if convicted. We have no problems convicting. We have an investigative staff, both in the county and the city who take care of these problems and very nearly all of the time, nearly always, I should say, we end up with confessions from defendants. It is remarkable how these defendants will finally, in the light of an accusation, confess to what they have done to these children.

The biggest problem we have in this area is getting a judge to impose the 4-year minimum.

As I indicated, the mere lewd fondling of a breast is sufficient to bring you within the purview of that statute. Judges have difficulty assessing a 4-year minimum there, therefore they turn to the only alternative, which is probation.

There is no law presently in Illinois relating to penalties for the production or manufacture of the type of material you are concerned with here.

We have two laws that come close to it. Indecent solicitation, which is a misdemeanor, and goes to soliciting a child to do an indecent act. And second, harmful materials; to show harmful material to a child. That too is a misdemeanor.

There is such a document on the Governor's desk now dealing with this particular problem. It has not yet been signed. I understand it will plug that hole.

One of the problems we all face is distribution of information between law enforcement agencies. Except for a large metropolitan area, such as New York or Chicago, no jurisdiction knows what is happening in the rest of the country.

Federal intervention in that area ought to creat an agency which can deal with it throughout the entire country and distribute the information from one office to another.

As a matter of fact, we in Rockford had no idea that such material was being produced, when an individual by the name of Guy Strait came to our jurisdiction and produced such a film and later was prosecuted for having engaged in sexual activity with one of the children who was in the film.

Mr. **Conyers.** It was produced in your county?

Mr. **Gemignani.** He produced a film in our county. You people have heard talk about piercing the corporate veil. Guy Strait, and you have much of what he said to the Rockford Police Department here in the exhibits, told us that "chicken" film is something which is produced by individual people, not corporations. He himself, was a chicken film producer. It wasn't a corporation, it was an individual.

You are not going to find photographers, cameramen, et cetera, who are going to go out and get into this business for a salary. The producers will be the cameramen, the developers and the distributors—you are dealing with individuals.

Once you find them, once you determine who they are, you can come down on them hard.

Gentlemen, we in the hinterlands do not have the money to ferret these people out. We do not have the money with which to prosecute even mere obscenity. There are 102 counties, and I beg your pardon for getting strong about this, but there are 102 counties in Illinois, each with its own adult book store, if not two or three. And in every single store right now there is a violation, maybe several, and we can go in there with the proper investigative agency and make several arrests today, tomorrow and the next day, and this can continue. That automatically raises 102 appeals in the appellate level, all centering on the Supreme Court of Illinois. We don't have that kind of money. We don't have prosecutors that we can give this particular jurisdiction to and let them do nothing else.

The counties don't have it. It has to come from the Federal Government. This activity has to be stopped at the interstate level by interstate intervention, and that means the Federal Government.

Now there has been some indication here that perhaps there is no connection between obscenity and crime. The last case that was assigned to me before I left, as this document here says, was a case of a 17-year-old boy who from 11 p.m. until 1 a.m. in the morning was in a bistro near Rockford watching nude dancers and, he says, "who even let me touch them." He went home, and an hour later he went next door and he raped a 78-year-old woman.

Now I am not a philosopher, a social scientist, or a psychiatrist. I can't tell you there is a connection, that is to say, I cannot prove it to you. But you will not convince me that there wasn't a connection between that incident and what the young man did in regard to what he saw.

Obscenity is a product. It stimulates, it whets an appetite, it creates a desire. Some of us can handle it, some of us cannot. There is a connection. Very nearly all of the time when our police pick up people who have tried to pick up children, there is some sort of obscenity involved. They are trying to show pictures to the kids in order to pick them up. To interest them.

The worst rape case I ever handled was a 20-year-old rape of a 4-year-old. He tore her to pieces, inside and out. His room was filled with obscenity.

Now, gentlemen, we have searched lots of rooms where there have been murders and armed robberies, and we have found no obscenity. We have searched a lot of rooms where there have been rapes of women and sex crimes against children, and we have found obscenity. From that I can do nothing but say there is a connection. What it is, I do not know, but there is a connection. Hence obscenity must be eradicated.

Those of us at the lower level don't have the money with which to do it.

I am going to close by telling you this, and this is in my statement here. Guy Strait said he had a list of 50,000 people who wanted to buy his chicken film throughout the country.

As I understand it, that list is in the hands of the Los Angeles city police. You close that conduit, you close it, with Federal intervention, and we will save a lot of kids.

[The prepared statement of Mr. Gemignani follows:]

STATEMENT OF ROBERT G. GEMIGNANI, FIRST ASSISTANT STATE'S ATTORNEY, WINNEBAGO COUNTY, ROCKFORD, ILL.

MEMBERS OF THE HOUSE SUBCOMMITTEE

We have a broad and most progressive statute entitled Indecent Liberties with a Child. It condemns lewd fondling, copulation, anal intercourse, cunnilingus and fellatio with a child under the age of 16 by individuals over the age of 16 if done with the intent to arouse the child or the defendant.

The penalty is four to life or any indeterminate number of years fixed by the court. Probation, with or without a short period of confinement, is an alternative, as is work release.

The statute is tight, clear and requires few elements to sustain the charge. Lewd fondling can include the mere touching of the breasts and, of course, the genitalia.

Any of the four types of conduct may be the subject of the charge, and if proved, the basis for the penalty.

That, is the inherent weakness of the statute. The penalty is too severe for the conduct. The penalty leaves little, if any, discretion in the hands of the judge. Judges are reluctant to confine a person for a period of four to eight years in the penitentiary for merely fondling the breasts of a 15 year old girl. We face the same problem for accelerated sex conduct when the child is precocious and has an extensive sexual history. Hence, except in the most aggravated cases, and even then, judges are, because of the four year minimum, reluctant to impose a confinement sentence. As an example, within the last two months, I had a case where a 25 year old woman engaged in cunnilingus and copulation with a 10 year old boy not her own, and in a hard fought sentencing hearing was given probation. In another case on a plea of guilty to copulation with a child first when she was eight years of age and continuing until she was eleven, at which time she became pregnant and had an abortion; again in a hard fought sentencing hearing, probation was given.

As a result, we will occasionally bypass the crime of indecent liberties and charge under the incest statute; step children are protected by your act and the elements are identical with those of indecent liberties. The penalty, however, is one to twenty years and the courts are more prone to impose penitentiary time upon conviction. The basic problem, however, is the fact that the statute does not cover situations where no relationship between the participants exists.

A second weakness in the statute is that it makes no attempt to condemn or provide for punishment for any conduct involving the use of children in or as a part of any obscene film, play, picture, dance or performance. As a matter of fact, we have no statute of any kind which reaches that type of conduct.

The only related statutes we have are Indecent Solicitation of a Child and a statute entitled Harmful Material. The first is a misdemeanor and deals with the solicitation of a child to do an indecent act. That, of course, would condemn the aforementioned conduct, public or private, but the punishment is minimal. The latter statute simply deals with what is shown or exhibited to a child and not what one induces a child to do. It is clumsily drawn and of little value.

As a consequence, we in Illinois simply have no present statute that deals with the problem of having children perform or engage in sexual activity live or for the purpose of filming, public or private. I believe, however, that two or three bills closing the breach are on the Governor's desk at this moment.

With the exception of one serious problem area, common to all infant crimes, we have little difficulty in convicting. Our courts require either corroboration, or that the testimony of the child be clear and convincing. As to the last, that is a matter for the trier of fact, which, of course, is the jury or the judge, whichever the case may be. Corroboration may take the form of medical fact or testimony. Medical facts include the presence of sperm, trauma, lack or destruction of the hymen, social disease or pregnancy. Corroborating testimony, of course, is some witness concerning opportunity, the description of the child's emotional state, immediate complaint and statements by the defendant. As a matter of fact given an interested and competent investigative agency, in virtually every case the defendant in these matters will confess. As a result, we nearly always have some corroboration. When none is present, it seems that the trier of fact has little difficulty believing the child.

Though defendants are reluctant to go to trial in these matters, they are more reluctant to face juries than they are judges; hence, if there is a trial generally it will be a bench trial. More often than not, the investigation will coerce a plea, since defendants are aware that it is better to face a sentencing judge who has heard only a bare statement of facts rather than a judge who has heard a blow by blow account of the incident during a three or four day trial.

The problem area, and one that is most frustrating and nearly unsolvable, is the principle of witness competency. In most courts, a child is automatically not competent to testify if under a certain age. In addition, in most courts a child is not competent to testify even though he or she is older than the minimum. It depends primarily on the child's mental development, his or her ability to understand an oath and to recall and state facts.

As you can readily see, when there is no corroboration, physically or by witness, a child under the age of six or seven may be abused at will by anyone and so long as the molester denies the act there is no recourse, and it can be the same for older children depending upon their ability to testify. Any new law must be able to circumvent this problem to be effective.

I have on many occasions interviewed children in the five, six and seven age groups and determined to my own satisfaction that they have been abused but that they were in no way competent to testify. Often, I have had older children who appear to be competent while discussing the incident in my office, but who fail miserably in the courtroom. They cry, are terrified, intimidated, requested to speak or state facts in adult terms and the result is that they remain mute, stare and refuse to testify. Others are sullen, embarrassed and many frequently giggle. More often than not, they do not know the words that we expect them to use regardless of the amount of prepping we employ. We simply end up by having them point to the areas of their bodies that have been violated.

Spontaneous declarations will occasionally fill the gap. For example, the worst child abuse case I have yet encountered involved a 20 year old male who raped a four year old child. The child never took the stand. We proved her existence by parents, the incredible internal injuries by her doctors and the identification of the defendant by her immediate accusation which qualified as a spontaneous declaration.

When I first began as an Assistant State's Attorney, our case load of child sex abuse averaged one or less a year. That was 13 years ago. It remained that way until about seven years ago when the case load gradually increased to four or five a year. In the last three or four years, however, we have seen a sudden, dramatic and alarming increase. So far this year, I have been assigned 22 cases of indecent liberties. Now, I don't mean to imply that 22 cases is a startling case load when compared to larger cities, but the increase from four or five cases a year to 25 or 30 cases a year in five years is not only alarming but it cannot be ignored, and demands discovery of the cause. I cannot explain the increase. I can only give you my opinion.

We have been told time and time again that there is no relationship between obscenity and the increase in sex crimes. We are told that it is simply a case of better crime reporting. That because people are encouraged to come forward, they have come forward; hence, there really is no increase in sex crimes, just more that we hear about. That may be true, but my experience has been that in most rapes or child abuse involving sex, our investigation will reveal an inordinate preoccupation with obscenity by the defendant in the form of such material being discovered on his person, in his car or in his home.

Now, I am told I may not draw any conclusion from that fact, but the inescapable conclusion is that in sex cases, we discover such material but we do not discover such material in armed robberies, murders and other such crimes. It doesn't take a genius to realize that our most successful corporations spend millions on advertising. That the advertising is geared to stimulate one's desire or appetite for the product. The analogy with obscenity is almost identical. Some people can handle it, some cannot. The last case assigned to me prior to leaving Rockford was a case involving the savage rape of a 78 year old woman by a 17 year old boy. Where was he from 11:00 p.m. to 1:00 a.m.? In a bistro, "watching nude dancers who even allowed him to touch them". One hour after he got home he went next door and committed the act. Connection? I can't prove it . . . but I won't believe otherwise.

Our police files show case after case where men have attempted to pick up and seduce children off our streets by attempting to show them obscenity and in cases where seduction has been completed, the children are later induced to pose outside of and during sex acts and that these photographs are lewdly cherished by the defendants.

I cannot say obscenity is responsible, but I can say there is a connection.

Obscenity is a problem with which most local prosecutors cannot cope and which most cities or counties cannot afford to prosecute.

It is clear that most adult book stores are staffed by well paid underlings who do and know little more than how to ring up a sale. In return for silence, they are paid well, supplied with any and all bond requirements when arrested and all attorneys fees are subsidized. Our office has tried seven obscenity cases during the past three years and on very nearly every occasion the same attorney or law firm has represented the defendant, and we know that this firm or some attorney from the same firm does nothing but fly from jurisdiction to jurisdiction to handle nothing but identical cases in a certain pre-determined area or region. He has one client, as does his counter part in other pre-determined areas. In the case of our prosecutions, each was a jury trial and each was appealed to the Illinois Appellate Court, the Illinois Supreme Court and through the Federal system to the United States Supreme Court. I think you can see how this would have a chilling effect on the desire of any prosecuting attorney to take on the prosecution of an obscenity case. To do it properly would require a full time obscenity expert who would have no other duties except the prosecution of obscenity cases. Arrests probably can be made every single day in most adult book stores. Our county cannot afford the prosecutor or the amount of prosecution required to eradicate the violations. As a matter of fact, no county or State can. It is conceivable in Illinois that one arrest in each county could produce 102 simultaneous prosecutions on any given day and three or four years later when prosecution and appeal was concluded we would have nothing more than a misdemeanor conviction of an underling who would be fined or merely serve a minimum term in jail. What is needed is a Federal law behind which can be thrown the full resources of the Federal government both in the investigation stage and the prosecutorial stage. The group or organization that is producing this material and subsidizing the legal defenses must be ferreted out, arrested and prosecuted. We can't do it. It is just too big and the job is far too costly, and of course, it crosses state lines.

There is little question that we are dealing with a group. We may not know what it is called; i.e., a syndicate, a mob, the organization etc., but in any event it is a single group which controls the manufacture and distribution of the product. We have been told this by disgruntled or dissatisfied underlings who no longer work for the group but who refuse to testify, as well as some of the local attorneys who once acted in peripheral areas for this group but who became disenchanted and have refused further participation, and because we are friends have volunteered some information. It has also been determined that the vending machines used in the peep shows can be traced to vending machine companies whose backgrounds are connected. And, finally we have been told by Guy Strait. As you know, we charged and convicted him for the crime of indecent liberties with a child. The conduct alleged was fellatio with a 14 year old male who with two other males, 12 years and 13 years, had, just prior to the sex act, been induced by Strait for $200 a piece to perform lewd sex acts in a group before a camera.

Strait appears to be an intelligent, kind and affable cherub. He loves to talk and we spent a good deal of time discussing his livelihood . . . the top producer of "chicken films" in the United States, by his own admission. He talks freely of the structure in the manufacture and distribution of obscenity. He said that all obscenity is controlled by the syndicate and not the mafia. He described the mafia as being comprised of one ethnic group of people and which dealt in shylocking, prostitution and gambling. The syndicate he said was a connected nationwide organization comprised of hoodlums, crooks, thieves etc. of all ethnic groups . . . the common denominator being that they dealt in all crime and in particular drugs and obscenity. He outlined a network of New York corporations that dealt in both hard core and soft core obscenity. He tied it to Atlanta, Dallas, Chicago and Los Angeles, but he is reluctant to name names stating that he would not last a week in the penitentiary if he did.

I have supplied you with exhibits which are detailed Rockford Police Juvenile Division reports which recap much of what Mr. Strait has told us. Some names, corporations and other material which can be the source of extensive investigation are contained therein. [Retained in committee files.]

In addition, I can recall him telling us that this country was divided into what he called regions and that certain men are responsible for each region, all of which are controlled by a central group, to which each region must answer.

He tells us that a fertile source or starting point in any investigation are the many legitimate and well known business people who sell paper, ink, presses, machines and who rent buildings, offices and warehouses to these people and who are aware that they are indeed doing business with the hard core pornographers.

Finally, if the dissemination of this material, which includes the business of manufacturing and distributing reels of film depicting children in the sex acts, is a nationwide business, its control and or destruction must necessarily emerge from a nationwide investigation. As you know, that is best done by building a solid case against someone on the inside and then offering him his freedom in return for his in-depth knowledge of the organization.

We had that offer from Craig Peterson, Mr. Strait's attorney. We could not avail ourselves of it since we had no jurisdiction outside of Winnebago County and no authority to bind any Federal agency. We passed it on to an appropriate Federal agency.

The Strait case teaches another important lesson in the unilateral prosecution of "important" criminals suspected of being involved in nationwide activity.

Strait was wanted by two metropolitan areas for a multiplicity of sex crimes related to a number of children as well as for his activities in obscenity, and yet, though he had jumped bond, we were not aware of what we were dealing with until after our case was broken. The mutual exchange of meaningful information between local law enforcement agencies, except for the most metropolitan areas, is virtually nonexistent. Obviously, Federal intervention in this area will prevent such anomalies from occurring.

For these reasons, it is my belief that tough Federal legislation aimed at the production for interstate transportation of all obscenity be enacted and vigorously prosecuted. In addition, I believe that there ought to be provided in such legislation more severe penalties for the production and distribution of any material depicting children engaged in any kind of sexual activity.

Mr. Strait had a mailing list that contained the names of 50,000 people. If we sever that conduit of profit, we can save a lot of kids.

Mr. Conyers. Thank you very much.

My only question is does the 4-year minimum help or hurt the situation?

Mr. Gemignani. It hurts terribly. A judge must have latitude. As far as my own personal opinion, I think the judge ought to be able to sentence one to life, so he can take each case individually and assess it, and hand out the sentence. Any 4-year or 5-year minimum, any large minimum, deters any kind of sentence unless the crime is heinous.

Mr. Conyers. You have made a very impressive statement here, as our final witness for the day. I appreciate it. Mr. Ashbrook.

Mr. Ashbrook. I was particularly interested, as I scanned your testimony, in the *Strait* case. That one clearly was tied to interstate commerce.

Mr. Gemignani. Clearly.

Mr. Ashbrook. Could you give us some of the areas where you think we could help on that particular situation? I know you talked of the offer of Craig Peterson, Mr. Strait's attorney, and said you could not avail yourself of it since you had no jurisdiction outside of Winnebago County, and no authority to bind any Federal agency.

I guess if our legislation were on the books, probably Mr. Strait would be taken care of by the Federal prosecutors, and wouldn't be handled by the 102 counties from your point of view. Are there other areas where we could be of some help in a situation like that, where somebody is clearly tied in to an interstate group?

I notice on the police sheet it says "Thousand Oaks, California, doing business as DGM Productions," et cetera. He obviously is somebody who is maybe filming in your area, but producing and distributing films in California.

Mr. Gemignani. These people hold conventions, these people who produce these films. They send out invitations to various people in the country, according to Guy Strait. At the conventions arrangements are made between Guy Strait and the other people that produce these films to go to the area where the visitors to the convention have come from to produce the film.

It is not talking about the zeal of prosecutors. It is the zeal of the investigator. Gentlemen, unless you ferret out a piece of crime and put it on my desk, I cannot prosecute and I certainly don't have time to go out and investigate it; I am not the investigator. I am the prosecutor.

First you have to have a statute that sets forth what the crime is, then you must convince the people who are to enforce that statute that it must be enforced, and to make a case and teach them how to make a case.

Once you imbue them with these characteristics, they will do it for you and put it on your desk and you have no problem in prosecuting.

So the two are different. You must have the statute, you must create the zeal, the want, the desire in the people who are to enforce that statute to go out and ferret out the crime itself.

Now Strait told us this: These people who are producing pornography, whether it deals with children or not, rent warehouses from legitimate businesses, they buy ink from legitimate businesses, they buy presses from legitimate businesses, they buy office space from legitimate businesses. And if these investigators can go to these legitimate businesses and make them tell the investigators with whom they are doing business, and what business they are in, you have a start. And believe me, the legitimate businesses who are selling these products or these services to these people know that the people are producing this sort of thing.

You see, you need something broad, which can go into all of these areas. And that is the beauty of your legislation, as far as we are concerned.

Mr. ASHBROOK. I noticed something else in your testimony, I think it was a 4-year-old, you didn't need to produce her in court, you just by a series of evidentiary introductions established there was a 4-year-old.

I wonder if there is some way we can legally and constitutionally bridge the gap of our problem of age proof et cetera, by comprehension or some evidentiary process that will do the same thing?

That is one thing we face with a lot of fear and trepidation, the age problem, and how we can prevent the distribution of these films and these explicit sex acts.

If we fail in the first instance, if we don't crash into the warehouse where they are filming it, somehow it gets into print, or onto a film, and is distributed, we clearly have some problem of age in this particular area. Do you have any suggestions on that?

Mr. GEMIGNANI. Well, the example to which I allude in my paper deals with the competency of a witness, not really the age at which the type of conduct is to be legislated against. The competency of a witness goes to whether a person has a mental problem, and therefore cannot speak properly, or because of his age. If he is not competent to take an oath, to understand the oath, and to repeat that which he or she has seen in a court of law.

Generally a child is incompetent to testify when it has not reached the age of 7 or 8 years in most States. Even after that, there is still some difficulty. I don't know how you can reach this. I don't think you can enact legislation to cover it. As a lawyer, I can't see where you can.

The loophole we use is what is called a spontaneous declaration. If you reach a child when it has been hurt and it ejectulates words, this, in law, and I am sure most of you are lawyers, in law has a tendency to be worthy of belief, merely because it was ejected before someone had time to think up a lie or to think up what would be best for himself.

Therefore it is permitted on that ground. So you see if a 7-year-old child is raped, and it says "Johnny did it," someone who hears her say "Johnny did it" may at least in Illinois say that she said Johnny did it, and from there on in there is no problem.

Insofar as the age you are concerned with here, in the legislation with regard to when the act becomes illegal, our statute says this: It is an affirmative defense that the individual believed the child to be over a certain age. He must somehow initiate this with evidence. It is an affirmative act on his part. We have never had any problem with that whatsoever. Some how, some way, you can prove that he didn't have such grounds, because the child will say "I am in the 6th grade," or the child will indicate how old it is or whatever, somewhere if you talk to the child long enough you will find out where the person involved did in fact have reason to believe the child was coming within the scope of the statute.

Mr. **Ashbrook.** Thank you. I certainly appreciate your very intelligent contribution to this hearing. I think this has been an excellent hearing, Mr. Chairman.

Mr. **Conyers.** Yes. Mr. Volkmer, do you have questions?

Mr. **Volkmer.** Just briefly. How long have you been the States' attorney?

Mr. **Gemignani.** Dan Doyle is States' attorney. I am the first assistant. I have been there since 1963. That is 14 years.

Mr. **Volkmer.** Out of curiosity, are you acquainted with Bob Bier?

Mr. **Gemignani.** Bob Bier? What is his occupation?

Mr. **Volkmer.** He is an assistant attorney down in another part of Illinois, Adams County.

Mr. **Gemignani.** I must be acquainted with him, because I go to the conventions and meet them all.

Mr. **Volkmer.** He is in Adams County.

I don't think you have to be a sociologist to be able to determine the possible cause-and-effect relationship, and your comments in that regard as to what you saw or what you were told by investigators in the commission of crimes such as we are talking about here, and the pornography or obscenity that accompanied it, you have drawn this conclusion after how many years?

Mr. **Gemignani.** Thirteen or fourteen. I can't think any other way. There is a connection. What it is, I don't know. But there is a connection.

Mr. **Volkmer.** And you comment that some people can basically absorb it without the commission of a crime, while other people cannot.

Mr. **Gemignani.** Gentlemen, all you have to do is think of how you felt when you were a child, 18, 19, 20 years old, and you will remember what it did to you. Think of yourselves. Some of us can handle it, some cannot. It is as simple as that. It is a stimulant. That is why people observe it, that is why they look at it, it stimulates.

Mr. **Volkmer.** Thank you.

Mr. **Conyers.** Our staff counsel, Ms. Freed, has a question.

Ms. **Freed.** Thank you, Mr. Chairman.

Mr. Maddy, who appeared first today, brought a chart of information to us about the activities in the individual States going forward in enactment of laws. He told us in Illinois there are two statutes that have evidently passed the legislature, that are awaiting signature now. One will make it illegal to sell obscene materials, or induce a prepubescent minor to perform obscene acts.

Mr. **Gemignani.** Yes, I just scanned that.

Ms. **Freed.** With a $25,000 fine for the first offense and then $50,000 fine for the second offense.

The second statute would make it a class 1 felony to take indecent liberties with a child. Is that the statute under which you prosecute right now?

Mr. **Gemignani.** That is the statute to which I referred or alluded to in the beginning. There is presently an indecent liberties statute. I think what they are trying to do is add a section to it.

Ms. Freed. Will that help you out, or will you still need Federal assistance in your investigations?

Mr. **Gemignani.** I must not have made my point. We need Federal intervention because it crosses interstate lines. We don't have enough money to deal with it ourselves, we can't move from Rockford to California, where it is produced, and find those people, and the information which is available to California is not available to us. But if there is a Federal statute, under which all people are working, all this information is available to each agency wherever it might be.

Ms. **Freed.** You made your point. The Justice Department has appeared before us and stated they may have difficulties having the FBI investigate some of these cases, and we like to ask our witnesses questions on things the Justice Department has commented on.

My only other question is could you speculate as to why you had such an increase in your indecent liberties caseload? Could it have been because the media concentration has caused quite a few more arrests?

Mr. **Gemignani.** I don't know. I personally think that the increase in this sort of activity is due to, at least in part, to the excess dissemination of obscenity, our permissiveness in our society. That is to say, the making of it more available, whatever. I think it is tied somehow to obscenity itself. Or perhaps to our loose morals. I don't know what it is for sure. All I know is there is an increase, an alarming increase. And somebody ought to do something about it.

Ms. **Freed.** Thank you.

Mr. **Conyers.** Thank you very much.

Mr. **Volkmer.** Mr. Chairman, could I make sure we get one point? I think this point was made by the Attorney General of the State of Delaware, in calling for Federal intervention. And that is basically the limited manpower, the limited funds, et cetera, that you feel the local people, prosecutors, have in relationship to the Federal system, and the Federal court system. Instead of having perhaps 102 prosecutions moving up on appeal in the State of Illinois, you could have one Federal indictment, perhaps clearing up a lot of it all over by indicting the proper parties.

Mr. **Gemignani.** Precisely, that is exactly the point I wanted to make.

Mr. **Volkmer.** All you can basically get to is perhaps the local distributor and that is about it.

Mr. **Gemignani.** If we have a distributor. Remember the stuff is coming from this State to this State, not all States produce it, so you have got to go to the origin of the product and do something about it there. The Federal Government is that agency to do that.

Mr. **Conyers.** Thank you, again.

The subcommittee stands in adjournment.

[Thereupon, at 4:10 p.m. the hearing was adjourned.]

APPENDIXES

APPENDIX A

A—PRESENT LAW

A-1 Federal Obscenity Statutes.
A-2 Analysis of Existing State Laws on Sexual Child Abuse.
A-3 Analysis of State Law by the National Conference of State Legislatures.

PRESENT FEDERAL STATUTES

Chapter 71.—Obscenity

Sec.
1461. Mailing obscene or crime-inciting matter.
1462. Importation or transportation of obscene matters.
1463. Mailing indecent matter on wrappers or envelopes.
1464. Broadcasting obscene language.
1465. Transportation of obscene matters for sale or distribution.

AMENDMENTS

1955—Act June 28, 1955, ch. 190, § 4, 69 Stat. 184, added item 1465.

1950—Act May 27, 1950, ch. 214, § 2, 64 Stat. 194, substituted "matters" for "literature" in item 1462.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 39 section 3001.

§ *1461. Mailing obscene or crime-inciting matter*

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and—

Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means abortion may be produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of Title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

The term "indecent", as used in this section includes matter of a character tending to incite arson, murder, or assassination. (June 25, 1948, ch. 645, 62 Stat. 768; June 28, 1955, ch. 190, §§ 1, 2, 69 Stat. 183; Aug. 28, 1958, Pub. L. 85–796, § 1, 72 Stat. 962; Jan. 8, 1971, Pub. L. 91–662, §§ 3, 5(b), 6(3), 84 Stat. 1973, 1974.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U.S.C., 1940 ed., § 334 (Mar. 4, 1909, ch. 321, § 211, 35 Stat. 1429; Mar. 4, 1911, ch. 241, § 2, 36 Stat. 1339).

The attention of Congress is invited to the following decisions of the Federal courts construing this section and section 1462 of this title.

In *Youngs Rubber Corporation, Inc. v. C. I. Lee & Co., Inc.*, C. C. A. 1930, 45 F. 2d 103, it was said that the word "adapted" as used in this section and in section 1462 of this title, the latter relating to importation and transportation of obscene matter, is not to be construed literally, the more reasonable interpretation being to construe the whole phrase "designed, adapted or intended" as requiring "an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes." The court pointed out that, taken literally, the language of these sections would seem to forbid the transportation by mail or common carrier of anything "adapted," in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, "even though the article might also be capable of legitimate uses and the sendor in good faith supposed that it would be used only legitimately. Such a construction would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes. The intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress. Section 334 [this section] forbids also the mailing of obscene books and writings; yet it has never been thought to bar from the mails medical writings sent to or by physicians for proper purposes, though of a character which would render them highly indecent if sent broadcast to all classes of persons." In *United States* v. *Nicholas*, C. C. A. 1938, 97 F. 2d 510, ruling directly on this point, it was held that the importation or sending through the mails of contraceptive articles or publications is not forbidden absolutely, but only when such articles or publications are unlawfully employed. The same rule was followed in *Davis* v. *United States*, C. C. A. 1933, 62 F. 2d 473, quoting the obiter opinion from Youngs Rubber Corporation v. C. I. Lee & Co., supra, and holding that the intent of the person mailing a circular conveying information for preventing conception that the article described therein should be used for condemned purposes was necessary for a conviction; also that this section must be given a reasonable construction. (See also United States v. One Package, C. C. A. 1936, 86 F. 2d 737.)

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1971—Pub. L. 91–662, § 3(1), in second par. struck out "preventing conception or" preceding "producing abortion."

Pub. L. 91–662, § 3(1), in third par, struck out "preventing conception or" following "apply it for."

Pub. L. 91–662. § 3(1), in third par. struck out "preventing conception or" following "applied for."

Pub. L. 91–662, § 3(2), (3), in fourth par. substituted "means abortion may be produced" for "means conception may be prevented or abortion produced".

Pub. L. 91–662. § 6(3), in eighth par. added "or section 3001(e) of title 39" following "this section". Section 5(b) of Pub. L. 91–662 inserted reference to section 4001(d) of Title 39, The Postal Service, which reflected provisions of Title

39 prior to the effective date of Title 39, Postal Service, as enacted by the Postal Reorganization Act. Said section 4001(d) was repealed by section 6(2) of Pub. L. 91-662, effective on the date that the Board of Governors of the Postal Service establish as the effective date for section 3091 of Title 39, Postal Service.

1958—Pub. L. 85-796 provided in the eighth par. for continuing offenses by use of the mails instead of by deposits for mailing and for punishment for subsequent offenses.

1955—Act June 28, 1955, § 1, substituted in first paragraph "indecent, filthy or vile article, matter, thing, device or substance" for "or filthy book, pamphlet, picture paper, letter, writing, print, or other publication of an indecent character".

Act June 28, 1955, § 2, eliminated the fifth paragraph which read as follows: "Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device or substance; and"

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by sections 3 and 5(b) of Pub. L. 91-662 effective Jan. 9, 1971, see section 7 of Pub. L. 91-662, set out as a note under section 552 of this title.

Section 6 of Pub. L. 91-662 provided in part that the amendment by section 6(3) of Pub. L. 91-662 shall be effective on the date that the Board of Governors of the United States Postal Service establishes as the effective date for section 3001 of title 39 of the United States Code, as enacted by the Postal Reorganization Act [section 3001 of Title 39, Postal Service].

COMMISSION ON OBSCENITY AND PORNOGRAPHY

Pub. L. 90-100, Oct. 3, 1967, 81 Stat. 253 as amended by Pub. L. 90-350, title V, § 502, June 19, 1968, 82 Stat. 197; Pub. L. 91-74, title V, § 503, Sept. 29, 1969, 83 Stat. 123, provided that:

"Finding of Fact and Declaration of Policy

"SECTION 1. The Congress finds that the traffic in obscenity and pornography is a matter of national concern. The problem, however, is not one which can be solved at any one level of government. The Federal Government has a responsibility to investigate the gravity of this situation and to determine whether such materials are harmful to the public, and particularly to minors, and wheher more effective methods should be devised to control the transmission of such materials. The State and local governments have an equal responsibility in the exercise of their regulatory powers and any attempts to control this transmission should be a cordinated effort at the various governmental levels. It is the purpose of this Act to establish an advisory commission whose purpose shall be, after a thorough study which shall include a study of the casual relationship of such materials to antisocial behavior, to recommend advisable, appropriate, effective, and constitutional means to deal effectively with such traffic in obscenity and pornography.

"Commission on Obscenity and Pornography

"SEC. 2. (a) Establishment.—For the purpose of carrying out the provisions of this Act, there is hereby created a commission to be known as the Commission on Obscenity and Pornography (hereinafter referred to as the 'Commission'), whose members shall include persons having expert knowledge in the fields of obscenity and antisocial behavior, including but not limited to psychiatrists, sociologists, psychologists, criminologists, jurists, lawyers, and others from organizations and professions who have special and practical competence or experience with respect to obscenity laws and their application to juveniles.

"(b) MEMBERSHIP OF THE COMMISSION.—The Commission shall be composed of eighteen members appointed by the President.

"(c) VACANCIES.—Any vacancy in the Commission shall be filled by appointment by the President.

"(d) ORGANIZATION OF COMMISSION.—The Commission shall elect a Chairman and a Vice Chairman from among its members.

"(e) QUORUM.—Ten members of the Commission shall constitute a quorum, but five members shall be sufficient for the purpose of taking testimony or interrogating witnesses.

"Compensation of Members of the Commission

"Sec. 3. (a) Members Employed by United States.—Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(b) Other Members.—Members of the Commission who are not officers or full-time employees of the United States shall each receive $75 per diem when engaged in the actual performance of duties vested in the Commission. In addition, they shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"Staff of the Commission

"Sec. 4. Such personnel as the Commission deems necessary may be appointed by the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subtitle III of chapter 53 of such title relating to classification and General Schedule pay rates.

"Duties of the Commission

"Sec. 5. (a) Investigation and Recommendations.—It shall be the duty of the Commission—

"(1) with the aid of leading constitutional law authorities, to analyze the laws pertaining to the control of obscenity and pornography; and to evaluate and recommend definitions of obscenity and pornography;

"(2) to ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and volume of traffic in such materials;

"(3) to study the effect of obscenity and pornography upon the public, and particularly minors, and its relationship to crime and other antisocial behavior; and

"(4) to recommend such legislative, administrative, or other advisable and appropriate action as the Commission deems necessary to regulate effectively the flow of such traffic, without in any way interfering with constitutional rights.

"(b) Report.—The Commission shall report to the President and the Congress its findings and recommendations as soon as practicable and in no event later than September 30, 1970. The Commission shall cease to exist ten days following the submission of its final report.

"Powers of the Commission

"Sec. 6. (a) Hearings and Sessions.—The Commission or, on the authorization of the Commission, any committee thereof, may, for the purpose of carrying out the provisions of the Act, hold such hearings and sit and act at such times and such places within the United States as the Commission or such committee may deem advisable.

"(b) Consultation.—In carrying out its duties under the Act, the Commission shall consult with other Federal agencies, Governors, attorneys general, and other representatives of State and local government and private organizations to the extent feasible.

"(c) Obtaining Official Data.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this Act, and each such department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman or Vice Chairman.

"(d) Obtaining Scientific Data.—For the purpose of securing the necessary scientific data and information the Commission may make contracts with universities, research institutions, foundations, laboratories, hospitals, and other competent public or private agencies to conduct research on the causal relationship of obscene material and antisocial behavior. For such purpose, the Commission is authorized to obtain the service of exports and consultants in accordance with section 3109 of title 5, United States Code."

CROSS REFERENCES

Importation of immoral articles prohibited, see section 1305 of Title 19, Customs Duties.

Seizures and disposition of nonmailable matter, see section 3001 et seq. of Title 39, Postal Service.

Wire or oral communications, authorization for interception, to provide evidence of murder, see section 2516 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 sections 3001, 3011.

§ 1462. *Importation or transportation of obscene matters*

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier, for carriage in interstate or foreign commerce—

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes from such express company or other common carrier any matter or thing the carriage of which is herein made unlawful—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter. (June 25, 1948, ch. 645, 62 Stat. 768; May 27, 1950, ch. 214, § 1, 64 Stat. 194; Aug. 28, 1958, Pub. L. 85–796, § 2, 72 Stat. 962; Jan. 8, 1971, Pub. L. 91–662, § 4, 84 Stat. 1973.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U.S.C. 1940 ed., § 396 (Mar. 4, 1909, ch. 321, § 245, 35 Stat. 1138; June 5, 1920, ch. 268, 41 Stat. 1060).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "in interstate or foreign commerce" were substituted for ten lines of text without loss of meaning. (See definitive section 10 of this title.)

(See reviser's note under section 1461 of this title.)

Minor changes in phraseology were made.

AMENDMENTS

1971—Pub. L. 91–662 struck out "preventing conception, or" preceding "producing abortion".

1958—Pub. L. 85–796 substituted in opening par. "uses" for "deposits with," "carriage of which" for "depositing of which for carriage", in penultimate par., and inserted in last par. penalty provisions for subsequent offenses.

1950—Act of May 27, 1950, brought within scope of section the importation or transportation of any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91–662 effective Jan. 9, 1971, see section 7 of Pub. L. 91–662, set out as a note under section 552 of this title.

CROSS REFERENCES

Importation of immoral articles prohibited, see section 1305 of Title 19, Customs Duties.

§ 1463. Mailing indecent matter on wrappers or envelopes

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, and all postal cards upon which, any delineations, epithets, terms, or langauge of an indecent, lewd, lascivious, or obscene character are written or printed or otherwise impressed or apparent, are nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than $5,000 or imprisoned not more than five years, or both. (June 25, 1948, ch. 645, 62 Stat. 769; Aug. 12, 1970, Pub. L. 91-375, § 6(j) (13), 84 Stat. 778.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 18, U.S.C. 1940 ed § 335 (Mar. 4, 1909, ch. 321, § 212, 35 Stat. 1129).

Said section 335 of title 18. U.S.C., 1940 ed., was incorporated in this section and section 1718 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1970—Pub. L. 91-375 substituted "Postal Service" for "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendments by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by the Board of Governors of the United States Postal Service and published by it in the Federal Register, see section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Seizure and disposition of nonmailable matter, see section 3001 et seq. of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

§ 1464. Broadcasting obscene language

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than $10,000 or imprisoned not more than two years, or both. (June 25, 1948, ch. 645, 62 Stat. 769.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on sections 326 and 501 of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radiotelegraphs (June 19. 1934, ch. 652 §§ 326, 501, 48 Stat. 1091, 1100).

Section consolidates last sentence of section 326 with penalty provision of section 501 both of title 47, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Section 501 of title 47, U.S.C., 1940 ed., is to remain also, in said title 47, as it relates to other sections therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 47 sections 312, 503.

§ 1465. Transportation of obscene matters for sale or distribution

Whoever knowingly transports in interstate or foreign commerce for the purpose of sale or distribution any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, photograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

When any person is convicted of a violation of this Act, the court in its judgment of convictions may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest. (Added June 28, 1955, ch. 190, § 3, 69 Stat. 183.)

REFERENCES IN TEXT

"This Act," referred to in text means act June 28, 1955, ch. 190, 69 Stat. 183, which amended section 1461 of this title and added this section.

§ 1305. Immoral articles; importation prohibited

(*a*) *Prohibition of importation*

All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up of any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

§ 3008. Prohibition of pandering advertisements

(a) Whoever for himself, or by his agents or assigns, mails or causes to be mialed any pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative shall be subject to an order of the Postal Service to refrain from further mailings of such materials to designated addresses thereof.

(b) Upon receipt of notice from an addressee that he has received such mail matter, determined by the addressee in his sole discretion to be of the character described in subsection (a) of this section, the Postal Service shall issue an order, if requested by the addressee, to the sender thereof, directing the sender and his agents or assign to refrain from further mailings to the named addressees.

(c) The order of the Postal Service shall expressly prohibit the sender and his agents or assigns from making any further mailings to the designated addressee, effective on the thirtieth calendar day after receipt of the order. The order shall also direct the sender and his agents or assigns to delete immediately the names of the designated addressees from all mailing lists owned or controlled by the sender or his agents or assigns and, further, shall prohibit the sender and his agents or assigns from the sale, rental, exchange, or other transaction involving mailing lists bearing the names of the designated addressee.

(d) Whenever the Postal Service believes that the sender or anyone acting on his behalf has violated or is violating the order given under this section, it shall serve upon the sender, by registered or certified mail, a complaint stating the reasons for its belief and request that any response thereto be filed in writing with the Postal Service within 15 days after the date of such service. If the Postal Service, after appropriate hearing if requested by the sender, and without a hearing if such a hearing is not requested, thereafter determines that the order given has been or is being violated, it is authorized to request the Attorney General to make application, and the Attorney General is authorized to make application to a district court of the United States for an order directing compliance with such notice.

(e) Any district court of the United States within the jurisdiction of which any mail matter shall have been sent or received in violation of the order provided for by this section shall have jurisdiction, upon application by the Attorney General, to issue an order commanding compliance with such notice. Failure to observe such order may be puishable by the court as contempt thereof.

(f) Receipt of mail matter 30 days or more after the effective date of the order provided for by this section shall create a rebuttable presumption that such mail was sent after such effective date.

(g) Upon request of any addressee, the order of the Postal Service shall include the names of any of his minor children who have not attained their nineteenth birthday, and who reside with the addressee.

(h) The provisions of subchapter II of chapter 5, relating to administrative procedure, and chapter 7, relating to judicial review, of title 5, shall not apply to any provisions of this section.

(i) For purposes of this section—

(1) mail matter, directed to a specific address covered in the order of the Postal Service, without designation of a specific addressee thereon, shall be considered as addressed to the person named in the Postal Service's order; and

(2) the term children includes nautral children, stepchildren, adopted children, and children who are wards of or in custody of the addressee or who are living with such addressee in a regular parent-child relationship.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 748.)

EFFECTIVE DATE

Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3011 of this title; title 18 section 1737.

Stat. 937, and repealed by section 321 of that act. Section 305 of act 1922 was superseded by section 305 of the Tariff Act of 1930, comprising this section. and was repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1971—Subsec. (a). Pub. L. 91-662 struck out "for the prevention of conception or" preceding "for causing unlawful abortion".

1970—Subsec. (a). Pub. L. 91-271 substituted references to the appropriate customers officer for references to the collector wherever appearing therein.

1948—Subsec. (b). Act June 25, 1948, eff. Sept. 1, 1948, eliminated subsec. (b) which related to penalties against government officers, and is now covered by section 552 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-662 effective Jan. 9, 1971, see section 7 of Pub. L. 91-662, set out as a note under section 552 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-271 to take effect with respect to articles entered, or withdrawn from warehouse for consumption, on or after Oct. 1, 1970, and such other articles entered or withdrawn from warehouse for consumption prior to such date, or with respect to which a protest has not been disallowed in whole or in part before Oct. 1, 1970, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of the Bureau of Customs of the Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate were ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out as a note under section 1 of this title. All functions of the offices eliminated were already vested in the Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5, Government Organization and Employees.

SECTON REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 614.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C.

FEDERAL AND STATE STATUTES REGULATING USE OF CHILDREN IN PORNOGRAPHIC MATERIAL

There are presently five federal laws which prohibit distribution of "obscene" materials in the United States. One prohibits any mailing of such material (18 U.S.C. § 1461); another prohibits the importation of obscene materials into the United States (19 U.S.C. § 1305); another prohibits the broadcast of obscenity (18 U.S.C. § 1464); and two laws prohibit the interstate transportation of obscene materials or the use of common carriers to transport such materials (18 U.S.C. §§ 1462 and 1465). In addition, the 1968 federal Anti-Pandering Act (39 U.S.C. § 3008) authorizes postal patrons to request no further mailings of unsolicited advertisements from mailers who have previously sent them advertisements which they deem sexually offensive in their sole judgment, and it further prohibits mailers from ignoring such requests. There is no present federal statute specifically regulating the distribution of sexual materials to children.

Five federal agencies are responsible for the enforcement of the foregoing statutes. The Post Office Department, the Customs Bureau, and the Federal Communications Commission investigate violations within their jurisdictions. The F.B.I. investigates violations of the statutes dealing with transportation and common carriers. The Department of Justice is responsible for prosecution or other judicial enforcement.

It has long been recognized that the state has a valid special interest in the well-being of its children. *Prince* v. *Com. of Massachusetts*, 321 U.S. 158 (1944). A state may regulate the materials that juveniles view and read even if they could not be proscribed for adults.

In *Ginsberg* v. *New York*, 390 U.S. 629 (1968), the U.S. Supreme Court upheld a New York criminal statute that makes it unlawful to knowingly sell harmful material to a minor. The defendant in *Ginsberg* contended that the state statute violated the First Amendment. In response, the Court stated that the statute applied only to sexually oriented material that was found obscene under a constitutionally acceptable definition of obscenity. There was no First Amendment violation since, as the Court had noted in prior decisions involving "general" (adult) obscenity statutes, obscene material is not protected speech under the

First Amendment. The *Ginsberg* opinion also noted that the state had ample justification to sustain its regulation of an activity that was not protected by the First Amendment. The Court noted two state interests that justify the New York limitations on the commercial dissemination of obscene material to minors. First, the legislature could properly conclude that those primarily responsible for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility. Second, the state has an independent interest in protecting the welfare of children and safeguarding them from abuses.

Forty-seven states and the District of Columbia have some type of special prohibition against the dissemination of obscene material to minors. However, our research revealed that only six of these states have provisions prohibiting the participation of minors in an obscene performance which could be harmful to them. These states are:

CONNECTICUT GENERAL STATUTES ANNOTATED

§ 53-25. Unlawful exhibition or employment of child

Any person who exhibits, uses, employs, apprentices, gives away, lets out or otherwise disposes of any child under the age of sixteen years, in or for the vocation, occupation, service or purpose of rope or wire walking, dancing, skating, bicycling or peddling, or as a gymnast, contortionist, rider or acrobat, in any place or for any obscene, indecent or immoral purpose, exhibition or practice or for or in any business, exhibition or vocation injurious to the health or dangerous to the life or limb of such child, or causes, procures or encourages any such child to engage therein, shall be fined not more than two hundred and fifty dollars or imprisoned not more than one year or both. (1949 Rev., § 8373.)

NORTH CAROLINA GENERAL STATUTES

§ 14-190.1. Obscene literature and exhibitions.—(a) It shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity in any public place. A person, firm or corporation disseminates obscenity within the meaning of this Article if he or it:

(1) Sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or

(2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or

(3) Publishes, exhibits or otherwise makes available anything obscene; or

(4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide: any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication of the obscene.

(b) For purposes of this Article any material is obscene if:

(1) The material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (c) of this section; and

(2) The average person applying contemporary statewide community standards relating to the depiction or representation of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and

(3) The material lacks serious literary, artistic, political, educational or scientific value; and

(4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

(c) Sexual conduct shall be defined as:

(1) Patently offensive representations or descriptions of actual sexual intercourse, normal or perverted, anal or oral;

(2) Patently offensive representations or descriptions of excretion in the context of sexual activity or a lewd exhibition of uncovered genitals, in the context of masturbation or other sexual activity.

(d) Obscenity shall be judged with reference to ordinary adults except that it shall be judged with reference to children or other especially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to such children or audiences. In any prosecution for an offense involving dissemination of obscenity under this Article, evidence shall be admissible to show:

(1) The character of the audience for which the material was designed or to which it was directed;

(2) Whether the material is published in such a manner that an unwilling adult could not escape it;

(3) Whether the material is exploited so as to amount to pandering;

(4) What the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;

(5) Literary, artistic, political, educational, scientific, or other social value, if any, of the material;

(6) The degree of public acceptance of the material throughout the State of North Carolina;

(7) Appeal to prurient interest, or absence thereof, in advertising or in the promotion of the material.

Expert testimony and testimony of the auditor, creator or publisher relating to factors entering into the determination of the issue of obscenity shall also be admissible.

(e) It shall be unlawful for any person, firm or corporation to knowingly and intentionally create, buy, procure or possess obscene material with the purpose and intent of disseminating it unlawfully.

(f) It shall be unlawful for a person, firm or corporation to advertise or otherwise promote the sale of material represented or held out by said person, firm or corporation as obscene.

(g) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor and, unless a greater penalty is expressly provided for in this Article, shall be fined or imprisoned in the discretion of the court. (1971, c. 405, s. 1; 1973, c. 1434, s. 1.)

§ 14–190.6. Employing or permitting minor to assist in offense under Article.—Every person 18 years of age or older who intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14–190.1, shall be guilty of a misdemeanor, and unless a greater penalty is expressly provided for in this Article, shall be punishable in the discretion of the court. (1971, c. 405, s.1.)

NORTH DAKOTA CENTURY CODE

12.1–27.1–03. Promoting obscenity to minors—Minor performing in obscene performance—Classification of offenses.—1. It shall be a class C felony for a person to knowingly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.

2. It shall be a class C felony to permit a minor to participate in a performance which is harmful to minors.

CODE OF LAWS OF SOUTH CAROLINA

§ 16–414.1. Distribution, etc., of obscene matter; definitions.—For the purposes of §§ 16–414.1 to 16–414.9:

(a) "*Obscene*" means that to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest among which is a shameful or morbid interest in nudity, sex or excretion, and which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is to be distributed to minors under sixteen years of age, predominant appeal shall be judged with reference to such class of minors.

(b) "*Matter*" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statute or other figure, or any recoding, transcrip-

tion or mechanical, chemical or electrical reproduction or any other article, equipment, machine or material.

(c) "*Distribute*" means to transfer possession of, whether with or without consideration.

(d) The word "*knowingly*" as used herein means having knowledge of the contents of the subject matter or failing after reasonable opportunity to exercise reasonable inspection which would have disclosed the character of such subject matter. (1965 (54) 470; 1966 (54) 2273.)

§ 16–414.4. Same; employment of minor under sixteen.—It shall be unlawful for any person who, with knowledge that a person is a minor under sixteen years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under sixteen years of age, to hire, employ, or to use such minor to do or assist in doing any of the acts prohibited by §§ 16–414.1 to 16–414.9. (1965 (54) 470.)

TENNESSEE CODE ANNOTATED

39–3013. Importing, preparing, distributing, possessing or appearing in obscene material or exhibition—Distribution to or employment of minors—Penalties.—(A) It shall be unlawful to knowingly send or cause to be sent, or bring or cause to be brought, into this state for sale, distribution, exhibition, or display, or in this state to prepare for distribution, publish, print, exhibit distribute or offer to distribute, or to possess with intent to distribute or to exhibit or offer to distribute any obscene matter. It shall be unlawful to direct, present, or produce any obscene theatrical production or live performance and every person who participates in that part of such production which renders said production or performance obscene is guilty of said offense.

(B) Notwithstanding any of the provisions of §§ 39–3010—39–3022, the distribution of obscene matter to minors shall be governed by § 39–1012 et seq. In case of any conflict between the provisions of §§ 39–3010—39–3022 and § 39–1012 et seq., the provisions of the latter shall prevail as to minors.

(C) It shall be unlawful to hire, employ, or use a minor to do or assist in doing any of the acts described in subsection (A) with knowledge that a person is a minor under eighteen (18) years of age, or while in possession of such facts that he or she should reasonably know that such person is a minor under eighteen (18) years of age.

(D)(1) Every person who violates subsection (A) is punishable by a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000), or by confinement in the county jail or workhouse for not more than one (1) year, or by both fine and confinement. If such person has previously been convicted of a violation of §§ 39–3010—39–3022, a violation of subsection (A) is punishable as a felony by a fine of not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000), or by imprisonment in the state penitentiary for a term of not less than two (2) nor more than five (5) years or by both fine and imprisonment.

(2) Every person who violates subsection (C) is punishable by a fine of not less than two hundred fifty dollars ($250) nor more than five thousand dollars ($5,000) or by confinement in the county jail or workhouse for not more than one (1) year, or by both fine and confinement. If such person has been previously convicted of a violation of §§ 39–3010—39–3022, a violation of subsection (C) is punishable as a felony and by a fine of not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000), or by imprisonment in the state penitentiary for a term of not less than two (2) years nor more than five (5) years. [Acts 1974 (Adj. S.), ch. 510, § 3; 1975, ch. 306, § 1.]

VERNON'S TEXAS CODE ANNOTATED

§ *43.24. Sale, Distribution or Display of Harmful Material to Minor*

(a) For purposes of this section:

(1) "Minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2) of this section.

(c) It is a defense to prosecution under this section that:

(1) the sale, distribution, or exhibitoin was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) of this section in which event it is a felony of the third degree.

The power of the Federal Government to legislate with respect to obscenity *per se* is not expressly granted to Congress in Article I, or elsewhere, in the United States Constitution. Therefore, in enacting Federal laws seeking to deal with the obscenity problem, Congress has traditionally invoked its power to legislate under the commerce clause (Art. I, Sec. 8, cl. 3) and under the postal power (Art. I, Sec. 8, cl. 7). As interpreted by the United States Supreme Court, even though Congress' power to legislate under the commerce and postal powers is undisputed, nevertheless the manner of exercising these constitutional powers may be subject to some limitations.

The right of a sovereign state to limit, regulate and prohibit the labor of its minor children in employment prejudicial to their life, health or safety has never been denied. Nearly all of the states have undertaken to regulate child labor. However, in the presence of a great diversity of child labor standards in the different states the Federal Government undertook to remedy in some degree the lack of uniformity and insufficiency in state standards for child labor.

The Congress of the United States, after much agitation on the subject, enacted the Fair Labor Standards Act which, in part, provides that no goods shall be shipped or delivered in commerce where such goods were the results of oppressive child labor employment. 29 U.S.C. § 212 (1970). This law is based upon the power of Congress to regulate interstate commerce. The net general effect of the law places restrictions upon interstate traffic in the products of child labor. Prior Federal child labor laws were declared unconstitutional on the grounds that Congress had exceeded the proper exercise of its power to regulate interstate commerce, and had invaded powers reserved to the states. *Hammer* v. *Dagenhart*, 247 U.S. 251 (1918); *Bailey, Collector of Internal Revenue* v. *Drexel Furniture Co.*, 259 U.S. 20 (1922).

The *Dagenhart* case represents an era when the Supreme Court had a narrow view of commerce. Since that time, the whole concept of commerce has changed. Under the more recent decisions, the power of Congress is recognized to be broad enough to reach all phases of the vast operations of our national industrial system. *Mandeville Island Farms* v. *American Crystal Sugar Co.*, 334 U.S. 219 (1948); *United States* v. *Darby*, 312 U.S. 100 (1941); *Wickard* v. *Filburn*, 317 U.S. 111 (1942); *United States* v. *South-Eastern Underwriters Assn.* 322 U.S. 533 (1944). Therefore, it would appear that Federal legislation could be proposed which would operate similarly to the child labor provision of the F.L.S.A. This law could have the effect of prohibiting the shipment into commerce any motion picture or photograph in which children under a certain age have appeared in the nude or depicted in some other objectionable manner.

In *United States* v. *Darby*, *supra*, the U.S. Supreme Court stated that "while manufacture is not of itself interstate commerce, the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. The power to regulate commerce is the power 'to prescribe the rule by which commerce is governed' ". 312 U.S. at 113. The power of Congress over interstate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledge no limitation other than are prescribed in the Constitution". *Ibid.*, at 114. This "power can neither be enlarged nor diminished by the exercise or non-exercise of state power." *Ibid.* "Congress, following its own conception of public policy concerning the restrictions which may appropriately be imposed on interstate commerce, is free to exclude from the commerce articles whose use in the state for which they are destined it may conceive to be injurious to the public health, moral or welfare, even though the state has not sought to regulate their use." *Ibid.*

It has also been established that Congress may by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate commerce. *Maryland* v. *Wirtz*, 392 U.S. 183 (1968). In *Atlanta Motel* v. *United States*, 379 U.S. 241, 251–252 (1964), the Court stated that in those cases where commerce is involved, "Congress is clothed with direct and plentary powers of legislation over the whole subject" and therefore it "has the power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof".

Consequently, it would appear that legislation could also be proposed which would have the effect of prohibiting the act itself (use of children in the production of sexually explicit motion or still pictures) regardless of whether the material will enter into commerce inasmuch as it can be expected to "affect commerce". As Mr. Justice Clark stated in *Atlanta Motel* v. *United States*, supra:

> [T]he power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce. 379 U.S. at 258. See *Maryland* v. *Wirtz*, 392 U.S. 183 (1968); *Daniel* v. *Paul*, 395 U.S. 298 (1969); *Katzenbach* v. *McClung*, 379 U.S. 294 (1964).

PAUL S. WALLACE, *Jr.*,
Legislative Attorney,
American Law Division.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, D.C., July 29, 1977.

Ms. LESLIE FREED,
Subcommittee on Crime, House Judiciary Committee, Cannon House Office Building, Washington, D.C.

DEAR LESLIE: I hope you will forgive the delay in getting this information on state child pornography laws to you. The responses have been slowly arriving, and I have now heard from slightly more than half the states.

When we have received answers from all the States, the National Conference of State Legislatures will be publishing a more detailed report on the results. I wanted to share with you now the information I already have, however. The enclosed is a state by state summary of laws enacted or currently before state legislatures. In states where there is no law which specifically outlaws child pornography, some have noted other laws used by prosecutors as alternatives. I have copies of all these laws, and would be glad to share them with you if you feel that would be helpful.

Please call if you have any questions. I will be out of town for a week, but I can be reached through the office if you call Carol Wilson, 624–5415.

Sincerely,

TASSIE HANNA,
Research Associate,
Criminal Justice and Consumer Affairs.

State	Law	Provisions	Penalty
Alabama	No Specific law		
Alaska	No response		
Arizona	1977: ch. 125	Prohibits production and distribution of materials with minors engaged in obscene sexual conduct.	Felony of $10,000 to $20,000, and /or 5 to 10 yr.
Arkansas	No specific law; alternatives	Obscenity law; law against the sexual solication of a child; contributing to delinquency; sexual abuse; or rape.	
California	No response		
Colorado	do		
Connecticut	Sec. 53–25 (new law expected)	Prohibits use or exhibition of child under 16 for any obscene, indecent, or immoral purpose.	$250 and/or 1 yr.
Delaware	1977; House bill 468 passed	Amends obscenity law to include production and distribution of pornography involving minors.	Production of material is class B felony; 2d Offense—life imprisonment; distribution is a class C felony, 2d offense class B.
	1977; Senate bill passed Senate	Regulates adult book stores and entertainment; prohibits sale of child pornography.	Suspension or revocation of license; 2d offense, $50 to $1,000 or 1 mo to 1 yr.
Florida	1977; adds 847,014	New section, prohibiting production exhibition or distribution of child pornography; State attorney general given power to seek injunctions.	Production of material is a 2d class felony; distribution a 3d class.
Georgia	1978; 54–9903, 54–9904	Prohibits anyone from using children under 12 for indecent obscene or immoral exhibitions or purposes.	Misdemeanor.
Hawaii	No response		
Idaho	1973; 18–1517A	Prohibits hiring of minor	Misdemeanor; 2d offense, felony.
	Alternative	Prohibits lewd conduct with a minor child under 16	Maximum life imprisonment.
Illinois	1977; House bill 296 (signed)	Produce or distribute obscene materials with minors	Class 4 felony —up to $25,000. Subsequent offenses—class 3—up to $50,000.
Indiana	No response		
Iowa	do		
Kansas	No specific law; alternative KS 1976 supp. 21–4301.	State obscenity law prohibits production and distribution of obscene material.	
Kentucky	No specific law		
Louisiana	No response		
Maine	do		
Maryland	None; bills expected in 1978		
Massachusetts	No response		
Michigan	Passage expected in September 1977: Senate bills 380, 381.	Amends child abuse law to prohibit production of child pornography with child under 18.	For persuading children, felony with 1 to 4 yr; for producing, felony with 3 to 10 yr; for distributing, felony with 1 to 4 yr.
	House bill 4856	Amends child labor law to prohibit participation in sexually explicit material.	Felony—up to 1 yr and/or $10,000.
Minnesota	1977; ch. 371	Amends obscenity law to prohibit promotion and/or dissemination of pornographic material; outlaws production.	Felony for production, owning a business that knowingly disseminates misdemeanor for selling.
Mississippi	No response		
Missouri	do		
Montana	do		
Nebraska	do		
Nevada	do		
New Hampshire	1977, ch. 199	Prohibits use of minors in pornographic material, and sale of material.	Fine of up to $500, and /or 1 yr.

State	Law	Provisions	Penalty
New Jersey	No specific law:		
	Senate bills 3040, 3329 and A3370	Prohibit selling and production of obscene material	Vary from 3 yr and/or $1,000 to 20 yr and/or $50,000.
	Alternative—criminal sanctions	Employing children in immoral conduct; forcing child to participate in an act which impair's the child's morals; rape and carnal abuse; incest; child labor laws forbid appearance of minor in an exhibit dangerous to child's morals; child abuse.	
New Mexico	No specific law—alternatives	Child abuse, or contributing to the delinquency of a minor (ineffective enforcement).	
New York	No response		
North Carolina	No law enacted:		
	Senate bill 774	Amend child welfare laws to prevent procurement of children for preparing obscene materials.	Up to 3 yr.
	Senate bill 532	Outlaws using minors to produce sexually explicit material	Felony.
North Dakota	1975; 12.1 to 27.1–03	Amended obscenity law of minors to prohibit use of minors in materials which are harmful to minors.	Class C felony.
Ohio	No response		
Oklahoma	do		
Oregon	do		
Pennsylvania	No specific law:		
	18PS5903 (void; ruled unconstitutionally vague).	Obscenity law prohibited hiring, employment, or permission of minor in obscene act or material.	
	Senate bill 717 (passed senate)	Prohibits sexual abuse of children, and dissemination of photos and films.	Felonies of 2d and 3d degrees.
	House bill 70 (house considering)	Criminal sanctions against sexual exploitation of children; prohibits transportation of child pornography.	1st and 3d degree felonies.
Rhode Island	1977; ch. 131	Prohibits production and dissemination of child pornography	Up to 1 yr and/or $1,000. Successive violations have increased penalties.
South Carolina	No response		
South Dakota			
Tennessee	1977:		
	Ch. 227	Amended child labor laws; prohibits use of models in sexual conduct.	1 to 3 yr and/or $500.
	Ch. 405	Amended obscenity law to produce or promote materials of sexual conduct with minors.	3 to 21 yr, $10,000.
Texas	House bill 1269; signed	Prohibits sale or distribution of material showing child under 17 engaged in sexual conduct.	3d degree felony.
Utah	No response		
Vermont	do		
Virginia	do		
Washington	do		
West Virginia	1974, sec. 61–8A–1	Prohibits preparation, distribution or exhibition of obscene matter to minors.	Misdemeanor—up to $500 and/or 6 mo. for 1st offense; up to $1,000 and 1 yr for subsequent. Misdemeanor if person knowingly hires minors.
Wisconsin	New law possible in September 1977	To protect minors from being sexually exploited in pornographic productions.	
	Present law	Prohibits pronography	
Wyoming	No response		

APPENDIX B

STATEMENTS FOR THE RECORD

B–1 Ms. Barbara Scott, Motion Picture Association.
B–2 Mr. Robin M. Lloyd.
B–3 Mr. Stephen P. Hutchinson.
B–4 Hon. Peter W. Rodino, Jr.
B–5 Hon. Henry J. Hyde.
B–6 Hon. Bob Wilson.
B–7 Dr. Melvin Anchell.
B–8 Hon. Romano Mazzoli.
B–9 Hon. James M. Jeffords.
B–10 Marianne E. Cahill, National Council on Crime and Delinquency.

MOTION PICTURE ASSOCIATION OF AMERICA, INC.,
Washington, D.C., May 21, 1977.

Mr. HAYDEN GREGORY,
Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, Cannon Building, Washington, D.C.

DEAR MR. GREGORY: Enclosed is an original and 10 copies of the MPAA's comments on H.R. 3914.

I am deeply sorry that our schedules did not permit a personal appearance by anyone from the Motion Picture Association.

Sincerely yours,

BARBARA SCOTT,
General Attorney.

Enclosures.

MPAA COMMENTS ON H.R. 3914

The Motion Picture Association of America ("MPAA") is a trade association whose members are Allied Artists Pictures Corp., Avco Embassy Pictures Corp., Columbia Pictures Industries, Inc., Metro-Goldwyn-Mayer, Inc., Paramount Pictures Corporation, Twentieth Century-Fox Film Corporation, United Artists Corporation, Universal Pictures and Warner Bros. Inc. These companies are producers and the prinicipal distributors of most of the theatrical films exhibited in the United States. The MPAA companies do not produce or distribute or exhibit poronographic motion pictures or any motion pictures which we assume are intended to be covered by this proposal.

The Subcommittee has requested our views on H.R. 3914. The bill would amend the United States Code to prohibit the use of minors for sexual exploitation in photographs and films that are distributed in interstate commerce. We recognize and fully concur with the concern of the Congress and the public generally with this issue. In our opinion, H.R. 3914, as drafted, raises the following constitutional problems.

H.R. 3914 IS UNCONSTITUTIONALLY OVERBROAD AND VAGUE ON ITS FACE

Sections 2251 and 2252 prohibit the distribution and use of a person under 16 in a motion picture "depicting a child engaged in a prohibited sexual act or in the simulation of such an act."

Section 2253 defines "prohibited sexual acts", inter alia, as:

(I) any other sexual activity; or

(J) nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction.

Subsections "(I)" and "(J)" are unconstitutionally overbroad and vague. The United States Supreme Court has consistently held that motion pictures constitute a form of speech entitled to the protection of the First Amendment. *Joseph Burstyn, Inc.* v. *Wilson*, 343 U.S. 495 (1952); *Erznoznik* v. *City of Jacksonville*, 422 U.S. 205, 212 (1975); *Jenkins* v. *Georgia*, 418 U.S. 153 (1974). As speech, dissemination of motion pictures can only be restrained when it is obscene (*Miller* v. *California*, 413 U.S. 15 (1973), libelous (*Beauharnais* v. *Illinois*, 343 U.S. 250 (1952), or constitutes "fighting words" (*Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942).

Regulations of speech which exceed these bounds have consistently been held to be unconstitutionally overbroad and vague. *NAACP* v. *Button*, 371 U.S. 415

(1963); *NAACP* v. *Alabama ex rel. Flowers*, 377 U.S. 288, 307–8 (1964); *Gooding* v. *Wilson*, 405 U.S. 518, 520 (1972); *Grayned* v. *City of Rockford*, 408 U.S. 104, 108–9 (1972); *Erznoznik* v. *City of Jacksonville*, 422 U.S. 205, 212 (1975); *Interstate Circuit, Inc.* v. *City of Dallas*, 391 U.S. 53 (1968).

Subsection 2(I) is defined as any sexual act other than those enumerated in subsection (A) through (H) and subsection (J). This subsection is not aimed at any particular act, much less one that is obscene. It sweepingly prohibits *any* and all *undefined* sexual conduct as *per se* illegal.

Its overbreadth is obvious.

Subsection 2(P) includes within the prohibited sexual acts depictions of nudity if the nudity is for the stimulation or gratification of the viewing audience. In *Erznoznik* v. *City of Jacksonville*, supra, the Supreme Court was faced with a statute concerning nudity whose defects were similar to the ones involved here. The Court held that the restraint of a motion picture solely because it depicts "nudity" was unconstitutionally overbroad and invalid.

Subsections (I) and (J) would not therefore withstand constitutional scrutiny and we suggest that they be deleted and a substitute provision be inserted which would read as follows:

"(I) A lewd exhibition of the genitals in the context of sexual activity." This language which is precise and limited in scope does not suffer from the constitutional defects of §§ (I) and (J).

Section 2252 not only makes criminal the distribution of films depicting children engaged in the prohibitive sexual acts enumerated in Section 2253, but also prohibits the distribution of any films in which such acts are "*simulated*." The inclusion of the term "simulated" without a qualification as to its meaning is similarly unconstitutionally vague and overboard. On the one hand, this term could include the depiction of the performance of the entire sexual act short of consummation, and on the other it could include scenes which skillfully suggest sexual activity but do not depict the prohibited act.

We recommend that the word "simulated" be defined and a new Subsection (3) of § 2253 be inserted to read as follows:

"(3) The term 'simulation of such an act' means the depiction of the genitals in explicit sexual activity which gives the appearance of consummation of prohibited sexual acts."

The proposed addition of the reference to "an explicit depiction of human genitals" conforms the definition to the language used by the Court is those decisions. In *Jenkins*, supra at 161, the Court stated:

"While the subject matter of the picture is, in a broader sense, sex, and there are scenes in which sexual conduct including 'ultimate sexual acts' is to be understood to be taking place, the camera does not focus on the bodies of the actors at such time. There is no exhibition whatever of the actors' genitals, lewd or otherwise, during these scenes. There are occasional scenes of nudity, but nudity alone is not enough to make material legally obscene under the Miller standards." (Emphasis added)

The addition of these amendments would in our opinion cure the constitutional vagueness and overbreadth now contained in subsections (I) and (J) and the phrase "simulated."

We have not addressed the question of whether § 2252 would unconstitutionally restrain the distribution of non-obscene motion pictures.

If the purpose of the bill is to provide a statutory basis for criminal prosecution of those who actually exploit minors sexually, then it should be limited to the punishment of the individuals who actually engage minors in the making of such films and should not restrain the exhibition or distribution of those pictures if they are not legally obscene, *Miller* v. *California*.

The deletion of § 2252 would, of course, cure this constitutional defect.

BARBARA SCOTT, *General Attorney.*

STATEMENT BY ROBIN M. LLOYD, AUTHOR OF FOR MONEY OR LOVE, BOY PROSTITUTION IN AMERICA, PUBLISHED BY VANGUARD PRESS, 424 MADISON AVE., NEW YORK, N.Y. IN MARCH 1976. THE STATEMENT IS MADE AT THE REQUEST OF DEAN WILKINSON, AIDE TO CONGRESSMAN DALE KILDEE.

It is my understanding that Congressman Dale Kildee (together with Congressman John Murphy) is seeking information regarding the use of American children in commercial pornography to determine whether new legislation is need to protect children from sexual exploitation. I offer these comments based on a considerable amount of research undertaken to compile the data for my book.

The answer to the question on whether such protective legislation is needed is a resounding YES.

Over the past month, the press has reported numerous cases of children being sexually exploited and the public—quite understandably—has become angered and aroused. The public has been shocked by the sheer numbers of the children involved. The truth is, however, nobody really knows for sure just exactly what these figures are. But everyone who has worked in this field agree that the figures are big—much too big—and certainly big enough to warrant prompt federal and state action to diminish them.

Certainly, there is a need for an immediate study to document the extent of child-pornography but there is no need to wait for such a study to be completed before taking protective action.

We know that one-million American children run away from home searching for a better way of life. This has been documented by Senator Birch Bayh's subcommittee to investigate juvenile delinquency and confirmed by numerous other studies. It is from this vast army of dispossessed and disenchanted children that many are selected by the porno merchants for exploitation.

We know that shortly after the Houston murders of 27 young boys in 1973, John Paul Norman was arrested in Dallas for running a call-boy service by mail. Norman's files taken in the police raid included a master-list of some 50-thousand prospects for the services of literally hundreds of boys.

We know that in 1975, Houston police arrested Roy Ames after finding a warehouse full of pornography including 15-thousand color slides of boys in homosexual acts, over one thousand magazines and paperback books plus a thousand reels of film.

We know that in Santa Clara, California, police arrested a local high school teacher and a photographer who had been running a porno ring in that town for over ten years. 250 different boys were involved and over 10-thousand pictures were taken in the raid. The photographer also told police he had destroyed at least four times that amount.

More recently we have read about seven adults being arrested in New Orleans for using members of Boy Scout Troop 137 for the production of pornographic materials that were distributed nationwide. A similar case in Tennessee—still to be tried—involves an Episcopal priest who used the boys in his Boys Home for similar purposes. Also in Tennessee, another Scout leader was just sentenced to 30 to 45 years for sexual activities with members of his troop. There was a similar case in Waukesha, Wisconsin.

I could continue to present case after case; a veritable litany of woes to support what has been claimed; that large numbers of American children are being coerced into performing sexual acts for pornographers.

We had thought that child-pornography was mostly produced in Europe but investigations have now revealed that much of it is produced right here in the United States. One producer advertises on his promotional material that the films he offers are already here in this country. Working with the Los Angeles Police Department, I ordered a reel of child-pornography film from an address in Denmark. When the film arrived courtesy of the U.S. Postal Service, the package had a Los Angeles postmark. This information, coupled with other information, finally led to the location of the distributor.

It was a little unnerving to find that when his operation was raided, it was housed in the apartment building next to mine!

The child-pornography business has become a multi-million dollar industry. By my own count, I found 264 different magazines being sold in adult book stores across the country dealing with sexual acts between children or between children and adults. These magazines—well produced—sell for up to $7.00 each; one of them so exclusive it deals with homosexual acts between identical twin brothers.

Quite recently, a man with the unlikely name of Guy Strait was sentenced to a lengthy prison term in Rockford, Illinois for using children for pornography. Mr. Strait was considered to be a big producer. His partner, Bill Byars is the heir to the Humble Oil fortune and fled the country a couple years ago to Italy. These partners produced vast amounts of pornographic films and magazines. But when Houston police arrested Roy Ames, Ames described them as small-time operators. Houston police officers tried to make a deal with Ames offering him a light sentence in exchange for information about other producers. In spite of the fact that Ames was facing a ten-year sentence, he laughed at the police and told them his operation would run just as well while he was in jail as it would if he were out. He is now serving a lengthy sentence in a federal prison.

The need for action to protect our children is an immediate need. There are those who say that any legislation to control the production of these films will do injury to the First Amendment. As a member of the working press I am particularly sensitive to any encroachment on the constitutional right to free speech. But I become angry if it is suggested that the First Amendment was intended to include the freedom to produce the abuse and exploitation being discussed here. No one in his right mind could possibly consider that.

We shortchange our children in this country and pay a high price for that indifference later on. We see it in the growing rate of juvenile crime yet we continue to refuse to invest in the healthy growth of our children.

If we equate the amount of money allocated by the federal government for the care of children with the amount of money spent on other projects . . . and if we take this as an indicator of our concerns for children . . . we will quickly see just where children in America stand in the order of priorities.

They are way down at the bottom of the list.

And if we equate the amount of money spent on children by their parents with the amount spent on other things, the child's lowly status is confirmed.

We know we drink 600-thousand gallons of liquor every hour, 24 hours a day.

We know we spend 3-billion dollars a year on cosmetics to make ourselves sexually attractive, socially acceptable and so we smell good.

We also spend 685-million dollars a year on tropical fish, which means we spend more on fish food than on baby food. And we know now that we are spending unknown millions of dollars for the purchase of films and magazines showing our children performing sex acts.

Children care very little about money. They care about happiness, security and love . . . and money doesn't buy that. They care about love and in this they have a great advantage over adults because if a child is loved, that child knows it is loved for itself not for its money.

They are too young too vote; too young to have consumer spending power; too young to have lobbyists speak for them. But they are old enough to understand when they are not wanted—and in their little world—there is nothing so finally perceived and so finally felt as injustice.

I don't know whether we will ever recognize by the logic of experience that we suffer these horrors and indignities visited upon our children only because we are reluctant to accept the necessity for change. And I don't know what will happen if we continue to fail to respond to the steady deterioration of human values.

But I have a pretty good idea of what will happen if we don't . . .

We are not going to produce mentally healthy and happy children by issuing an executive order that all children must be loved . . . be we can author legislation to protect them and give them a fighting chance in this world.

To paraphrase Camus, who spoke for all of us who in some way work with children:

Perhaps we cannot prevent this America from being an America in which children are tortured . . . but we can reduce the number of tortured children.

And if you don't help us in this . . . who else in this world can . . .

Robin Lloyd was born in Great Britain and served with the Royal Navy during World War II. After the war he was Director of Public Relations for a prominent company in Venezuela while working on his master's degree at the University of Caracas. He entered the United States in 1949 and served with the U.S. forces in Korea commanding a PT boat for a combat intelligence unit. He became a naturalized U.S. citizen in 1952.

WRITING CREDITS

His first major book "For Money Or Love" received international acclaim following its publication by Vanguard Press in April 1976. Two other books are currently being researched for the same publisher.

MAGAZINE CREDITS

For Life: A couple of hurricanes, the Manson murders, a possible nominee for the Supreme Court, an atheist marriage ceremony, Operation Intercept, ecology, civil rights, a Presidential meeting, and crumbling Victorian houses.

For: Newsweek: Migratory workers, protest marches, Billie Sol Estes, people who live on yachts, symphony orchestras, social problems, sports car racing, surfers, and politics.

For Time: College dissenters, crooked lawyers, and opera singers.

For Business Week: A lengthy in-depth study of Pronaf, the Mexican border re-vitalization program.

For the Washington Post: A five-part series on the aftermath of Hurrican Beulah, a major story on a Senate sub-committee meeting and a complex will dispute.

TELEVISION CREDITS

Before joining NBC News, Los Angeles in early 1973, he was News Director of an NBC affiliate in Texas and produced a series of award-winning documentaries, including "Trouble in the Reformatory," an expose of brutality in the state reform school system. It triggered a state and federal investigation and won the Texas Association of Broadcasters Award for Investigative Reporting and UPI cited it as Best Documentary in their annual state awards. The film was instrumental in the reform school being closed.

PHOTOGRAPHY CREDITS

He is a member of the select Society of Photographers in Communications (ASMP) and his photographs have appeared in major magazines throughout the world, including the following: Newsweek, Life, Fortune, Time, Black Star, U.P.I., Saturday Evening Post, Washington Post, Nation's Business, VI Menn (Norway), Paris Match (France), Stern (Germany), Hoy (Mexico), President (Japan), and Panorama (Italy).

PREPARED STATEMENT OF STEPHEN F. HUTCHINSON, EXECUTIVE DIRECTOR, INSTITUTE FOR LAW AND MEDICINE, DIVISION OF ODYSSEY INSTITUTE, INC., FOR SUBMISSION TO THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CRIME, MAY 23, 1977

The Institute for Law and Medicine was pleased to participate in the development of proposed legislation which will forbid the use and exploitation of children in the production of sexually explicit materials.

The attached position paper was prepared to elaborate on the nature of this sexploitation, the shortcomings of existing statutes and law enforcement efforts in addressing the problem, and the constitutional issues inherent in the restriction of printed materials. Although this paper was prepared within a short time frame, I believe it fairly reflects the facts and considerations of each of these areas of concern.

The constitutional issue, we believe, is surmountable both in terms of the relative priorities and in terms of legal precedent. Few would argue that the right to publish includes the right to assault, abuse or otherwise harm a child for purposes of the publishing.

The materials in question should be viewed as products of a process of sexual and commercial exploitation and abuse of children. They are not the only products of this process—our treatment facilities and runaway shelters are beginning to admit the other products for treatment, including children as young as seven years of age.

With regard to the material products, however, Congress can and must exercise its authority under the Commerce Clause. The distribution of products of oppressive child labor can already be prevented under the Child Labor Act, without regard to the nature of the goods or products themselves. The existing paradox which must be removed is that, if children are used in the printing plants in violation of the Child Labor Act, the resulting products can be prevented from being sold or otherwise distributed. But if the children are used to model for films or photographs even while performing perverse sexual acts, the ultimate product-magazine is supposed to be protected under the First Amendment.

It is then argued that once material reaches printed form, it becomes sacred as if only by the fact of its printing. The First Amendment is not absolute and the freedoms therein should not be construed to destroy American children.

I welcome the opportunity to present these written remarks to the Subcommittee and offer the continued services of the Institute for Law and Medicine as a resource for your use.

ADDENDUM

We have been asked to review the federal statutes for any historical precedent wherein the Congress may have acted to forbid the sale or distribution of products in commerce based not upon any intrinsic features of such products but rather upon conditions or circumstances of their manufacture or production. Congress has acted when the manufacturing or production process so violates the public interest, and where sale and distribution of such products would otherwise continue to foster and encourage such practices.

Specifically, there is statutory precedent for prohibiting the shipment in commerce of goods manufactured by any person illegally employing child labor. Under the Fair Labor Standards Act, 29 U.S.C. § 201–219, § 212(a) of the Act states "[n]o producer, manufacturer or dealer shall ship or deliver for shipment into commerce any goods produced in an establishment situated in the United States or about which thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed . . ." Oppressive child labor "means a condition of employment under which (1) any employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well being) in any occupation, (2) any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Chief of the Children's Bureau (Secretary of Labor) shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; . . ." § 203(1).

Specifically exempted from § 212(a) is "any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions." § 213(c)(3).

We observe that but for the § 213(c)(3) exemption, shipment of pornographic motion pictures utilizing child actors would be illegal. This would be true even if the child were employed by his parent or guardian, as the use of a child in such materials is detrimental to that child's health and wellbeing § 203(L)(1).

The existence of sanctions (a maximum fine of $1,000 per incident of shipment of goods utilizing children in contravention of § 212, 29 VSC § 216(e)) for the shipment of goods identified on the basis of their mode of production is by analogy precedent for federal intervention to regulate distribution of sexually explicit materials the manufacture of which utilizes children as models and actors.

[From the Congressional Record, Wednesday, May 4, 1977]

CHILDREN IN PORNOGRAPHY

(Hon. John M. Murphy)

Mr. MURPHY of New York. Mr. Speaker, the legislation I have authored with Mr. Kildee to prohibit the use of children in the production and marketing of pornographic materials, now has attracted over 130 cosponsors to its various versions before the Education and Labor Committee and the Judiciary Committee.

We have now received commitments from both committee leaderships that hearings will be scheduled very shortly to develop a strong foundation of legislative intent in this very difficult area. As we continue to gather information and background on this sordid topic, we find an ever-diminishing justification for such abuse of children, and an ever-increasing basis for pressing the legislation into law as soon as possible.

We find that Federal law contains a massive void with respect to this problem, and State laws in the field are few, weak, and far between.

The Odyssey Institute of New York has taken a leading role in developing both the legislation and the public attitudes and awareness necessary to combat this exploitation of children. Odyssey has produced an important piece of research which looks at existing case law and precedents in the field of the use of children in pornography. I offer this document for the benefit of the Congress which will be called upon soon to decide whether such abuses of our children will be allowed to continue unchecked:

DEVELOPING FEDERAL AND STATE LEGISLATION TO COMBAT THE EXPLOITATION OF CHILDREN IN THE PRODUCTION OF PORNOGRAPHY

The American attitude toward its children manifests itself in many ways, including, unfortunately, a tolerance for child abuse and neglect in significant proportions and varieties. One such form of mistreatment recently the subject of considerable public outcry is the exploitation of children used in the production of sexually explicit films and magazines. This statement is offered to acquaint the reader with the nature of the sexploitation problem and the impact of these activities on the children involved. A survey and analysis of present and proposed legislation, and a brief review of cases is also offered for consideration. Finally, a look at the legislative response in terms of possible constitutional issues is appropriate as this aspect is the basis for whatever opposition seems to have surfaced.

The use of children, ranging in age from three to sixteen, has become a multimillion dollar industry. By recent count, there are at least 264 different magazines being sold in adult bookstores across the country dealing with sexual acts between children or between children and adults. These magazines—well produced—sell for prices averaging over $7.00 each.

Until recently, it was assumed that child pornography was mostly produced in Europe, but investigations have now revealed that much of it is produced in the United States—even some materials which are packaged in such a manner as to represent foreign origin.

Film makers and magazine photographers have little difficulty recruiting youngsters for these performances. Some simply use their own children; others rely on runaways. Recent findings of Senator Bayh's subcommittee on Juvenile delinquency and other studies show that more than one million American children run away from home each year. From this vast army of dispossessed children, exploiters select literally thousands of participants for their production needs.

Los Angeles police estimate that adults sexually exploited over 30,000 children under 17 in 1976, and photographed many of them in the act.

In 1975, Houston police arrested Roy Ames after finding a warehouse full of pornography included 15,000 color slides of boys in homosexual acts, over 1,000 magazines and paperback books plus a thousand reels of film.

In New York City, Father Bruce Ritter of Covenant House, a group of shelters for runaway children, has reported that the first ten children who entered Covenant House had all been given money to appear in pornographic films. These children, in their early teens could not return to their homes because of intolerable conditions of abuse and neglect, and could not find jobs or take care of themselves.

Many are not runaways, but come from broken homes. They can be induced to pose for $5 or a trip to Disneyland, or even a kind word. Sometimes the mothers are porn queens; often parents or guardians are addicts or alcoholics.

Recently, at the Crossroads Store in New York's Times Square, we purchased "Lollitots", a magazine showing girls eight to fourteen, and "Moppits", children aged three to twelve as well as playing cards which pictured naked, spread eagled children. We also viewed a film depicting children violently deflowered on their communion day at the feet of a "freshly crucified" priest replacing Jesus on the cross. Next, we saw a film showing an alleged father engaged in uralalia with his four year old daughter. Of sixty-four films seen, nineteen showed children and an additional sixteen involved incest.

The Victimization of Child-Porn Stars

Despite the highly secretive nature of the recruitment and sexploitation process, a growing body of information about the children involved confirms that psychological scarring and emotional distress which occur in the vast majority of these cases lead to significant other problems.

Dr. Densen-Gerber, founder of Odyssey Institute, states as a psychiatrist that such inappropriate sexuality is ". . . highly destructive to children. It leads them to join our deviant populations: drug addicts, prostitutes, criminals and pre-adult parents. . . . There is no proven connection that I know of between adult pornography and sexual abuse, but this degradation of children scars them for life".

There have also surfaced a number of children and young adults who had been involved in posing and/or performing for sexually explicit films and magazines. These children are now or have been in treatment programs for substance abuse, delinquency or other aberrant behavior. Some of these children have voluntarily recounted their experiences to law enforcement and news media persons who are attempting to learn more about the recruitment process and the type of activities involved.

Many are victimized in more brutal fashion. Los Angeles Police Investigator Jackie Howell rejects the commonly stated belief that nude posing is harmless to the children. "We have found a child molester is often also the photographer. Photography is only a part of it, a sideline more often than not to prostitution, sexual abuse, and drugs".

Application of Existing Legislation

There are currently a number of federal and state laws which relate directly or indirectly to this problem. On the federal level, there are five laws prohibiting the distribution of "obscene" materials. One prohibits any mailing of such material (18 U.S.C. § 1461); another prohibits the importation of obscene materials into the country (19 U.S.C. § 1305); another prohibits the broadcast of obscenity (18 U.S.C. § 1464); and two others prohibit the interstate transportation of obscene materials of the use of common carriers to transport such materials (18 U.S.C. § 1462 and 1465). Also, there is the Anti-Pandering Act of 1968 (39 U.S.C. § 3008) which authorizes postal patrons to request no further unsolicited mailings or advertisements which are sexually offensive.

There is no federal statute specifically regulating the distribution of sexual materials to children. There is likewise no federal statute involving interstate commerce which specifically regulates or restricts the production, distribution or marketing of this material.

Forty-seven states and the District of Columbia have some form of laws pertaining to the dissemination of obscene material to minors. However, only six states specifically prohibit the participation of minors in an obscene performance which could be harmful to them (Connecticut General Statutes, § 53-25; North Carolina General Statutes, § 14-190.1, et seq; North Dakota Century Code § 12.1-27.1-03; Code of Laws of South Carolina, § 16-414.1 et seq; Tennessee Code Annotated, § 39-3013; Texas Code Annotated, § 43.24).

State criminal statutes which deal with sex crimes often are not helpful, either because the physical activity does not meet the criteria of the statute, e.g., rape, sodomy, sexual abuse, or because they are so broadly worded as to discourage courts from applying them in terms of significant sanctions.

Many states have child welfare provisions within their education law, which regulate the employment of children in commercial activities. Unfortunately, these same laws either abdicate control when the child is working for a parent (Michigan Act 157 of the Public Acts of 1947 (as amended) § 409.14), or the sanctions are so limited as to pose no deterrent. (Education Law of New York, § 3231 (a), (c)).

Given the paucity of legislation which specifically relates to this activity, there can be little wonder at the relatively scarce attempts at law enforcement. The problems of case-finding and evidence are compounded by confusing the nature of sexploitation, viewed as a form of child abuse, with adult obscenity matters.

These problems and the attitudes of many judges discourage and actually thwart the few criminal investigations attempted. To illustrate, we excerpt the following from the Washington Post article of January 30, 1977 by Myra McPherson.

"Following a year's investigation, New York seized 1,200 films and magazines, many using children. Arrests were made. They convicted a major wholesaler, Edward Mishkin. Mishkin could have gotten seven years in jail—instead he got six months of 'weekends' in jail. Shortly thereafter, he was rearrested."

The Mishkin case is a familiar tale, repeated by law enforcement officials across the country. For example Kent Master, a New York distributor of "chicken films"—the vernacular for porn films involving children—advertises 10 films in its "lollypops" series. The ads show cartoons of two very young nude boys licking lollipops, the slogan "Chicken Films Come of Age" and graphic descriptions of sex acts, including "Ronnie, Bobby and Eddie—three preteens on a bed." The movies are 8 mm, in color, 200 feet and $20 each. There is an address, but directory assistance has no phone listed. Undercover agents recently arrested the firm's owner, charging him with the misdemeanor of promoting obscenity.

"Under present criminal statutes we can't go in with a search warrant and confiscate the films. He could not sell us more copies, and so the only thing we could do is charge him with a misdemeanor," says Manhattan District Attorney Robert Morgenthau. "And we still don't know who the children are or where they come from." . . ."

There is some reported case law worthy of mention.

In *People* v. *Byrnes*, 33 N.Y. 2d 343, 308, N.E.2d 435, 352 N.Y.S.2d 913 (1974), a father appealed his convictions for rape, sodomy, and incest after his eleven-year-old daughter testified that on two occasions she and her father went to the home of a photographer who filmed them engaging in sexual acts. The father argued on appeal that he was convicted solely on the uncorroborated testimony of his daughter. But the court found that photos of the illicit acts had been properly admitted as evidence. This was an interesting case in that it involved, in part, photos in which one of the participants was not clearly identified. A somewhat similar case is *State* v. *Kasold*, 110 Ariz. 558, P.2d 990 (1974), wherein evidence was admitted which included photos of the defendant with private parts exposed, and fully-clothed little girl with her back to the camera. For a discussion of the use of photos of parts of the anatomy as evidence in criminal trials, *see* 9 A.L.R.2d 889, 923–26 (1950).

In *City of St. Paul* v. *Campbell*, 287 Minn. 171, 177 N.W.2d 304 (1970) a conviction for disorderly conduct was reversed where the defendant had photographed a thirteen-year-old girl in the nude but had not created a disturbance in doing so. The court indicated that if the charge had been contributing to delinquency or employing a minor for immoral purposes, a conviction might have been reasonable.

In *People* v. *Burrows*, 260 Cal. App. 2d 228, 67 Cal. Aptr. 28 (1968) a conviction for false imprisonment and using a minor in the preparation of obscene materials was affirmed where evidence showed that an adult had bound the complainant hand and foot, abused him sexually, and photographed him in indecent positions.

An interesting question is whether a parent who photographs a nude offspring and circulates the photo to others, or who allows his unclothed child to be photographed even though the picture will be distributed publicly, could be criminally responsible. The photo may not be legally obscene (see below) and a parent may have a legal right to waive his offspring's right to privacy. That an infant should have a right of privacy in the dignity of his body is argued in 12 DUQUESNE L. REV. 645 (1974). But to what extent an infant has a right of privacy independent of the activities and directives of his parent is unclear. *See* Note, *Parental Consent Requirements and the Privacy Rights of Minors: The Contraceptive Controversy*, 88 HARV. L REV. 1001, 1008–09 (1975). A child's constitutional rights may be subject to the control of a parent, at least until the child becomes an adolescent. *See* Note; *Torture Toys, Parential Rights and the First Amendment*, 46 SO. CALIF. L. REV. 184, 188–201 (1972), and decisions discussed therein. However, there is no constitutional right to engage in an unlimited variety of sexual activities in the home. *See Cheesebrough* v. *State*, 255 So.2d 675 (Fla. 1971), *cert. denied*, 406 U.S. 976 (1972). And there is no right of privacy in family sexual affairs if photographs of such activities are taken with parental approval and are allowed to fall into the hands of others. *Cf. Lovisi* v. *Slayton*, 363 F. Supp. 620 (E.D. Va. 1973), *aff'd on other grounds*, 539 F2d 349 (4th Cir.), *cert. denied*, 97 S. Ct. 485 (1976).

In such situations (parental photos of nude offspring) a conviction for contributing to delinquency under present laws might still make sense if the reasoning in *State* v. *Locks*, 94 Ariz. 134, 382 P.2d 242 (1963) is followed. In *Locks*, the proprietor of a hobby shop allegedly induced an underaged youth to purchase a magazine containing photos of unclothed adults. In discussing the defendant's possible liability for contributing to deliquency, the court focused on the conduct suggested by the photos. "The suggestion that meretricious sexual relations are acceptable social conduct may be more injurious to the welfare of the child than an act of physical ravishment." *Id.* at 137, 382 P.2d at 243.

All of the present federal statutes have a single major failing—their lack of specificity regarding children. On both federal and state levels, the need to identify the materials as "obscene" has effectively blocked effective intervention to protect the children or to prosecute the exploiters.

Proposed Legislation

It is well established that the state has a valid special interest in the well-being of its children. *Prince* v. *Com. of Massachusetts*, 321 U.S. 158 (1944).

In *Ginsberg* v. *New York*, 390 U.S. 629 (1968), the U.S. Supreme Court upheld a New York criminal statute that barred commercial dissemination to minors. The defendant in *Ginsberg* contended that the state statute violated the First Amendment. In response, the Court stressed that the statute applied only to sexually oriented material that was found obscene under a constitutionally acceptable definition of obscenity. There was no First Amendment violation since, as the Court had noted in prior decisions involving "general" (adult) obscenity statutes, obscene material is not protected speech under the First Amendment. The *Ginsberg* opinion also noted that the state had ample justification to sustain its regulation of an activity that was not protected by the First Amendment. The Court noted two state interests that combined to support the New York prohibition against the commercial dissemination of obscene material to minors. First, the legislature could "rationally conclude" that the exposure of minors to obscene material was "harmful" to the youths' "ethical and moral development." Second, the state could appropriately seek to support the interest of parents in controlling their children's access to obscene material.

From a perspective of controlling obscene activities involving minors, it cannot logically be disputed that the state can constitutionally and properly protect their welfare by restricting materials available to them without, at the same time, possessing the authority and right to also protect the children from having to participate in the production of these materials.

On the federal level, the power to legislate with respect to obscenity has been derived from the constitutional power to regulate commerce. (Art. I, Sec. 8, cl. 3) The development of our child labor laws and the constitutional challenges thereto reflect a present recognition of broad Congressional powers, reaching all phases of our national industrial system.

Mandeville Island Farms v. *American Crystal Sugar Co.*, 334 U.S. 219 (1948); *United States* v. *Darby*, 312 U.S. 100 (1941); *Wickard* v. *Filburn*, 317 U.S. 111 (1942); *United States* v. *South-Eastern Underwriters Assn.*, 322 U.S. 533 (1944). Therefore, it would appear that Federal legislation could be proposed which would operate in a manner similar to the child labor provision of the F.L.S.A. This law could have the effect of prohibiting the shipment into commerce any motion picture or photograph in which children under a certain age have appeared in the nude or depicted in some other objectionable manner.

A similar analysis is productive in determining the power to regulate intrastate activities—the production of the materials involving the sexual conduct of children—where such activities clearly impact on interstate commerce. *Maryland* v. *Wirtz*, 392 U.S. 183 (1968); *Atlanta Motel* v. *United States*, 379 U.S. 241 (1964).

Consequently, it is clear that legislation can be developed to prohibit the sexual conduct itself (and related activities) regardless of whether the ultimate product will enter into commerce, inasmuch as it can be expected to "affect commerce".

Specially, the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the states or origin and destination, which might have a substantial and harmful effect upon that commerce, 379 U.S. at 258.

The proposed legislation is designed to address the sexual conduct and the activities related thereto, from soliciting the child to marketing of the product. There must be an awareness that the printed product cannot be isolated or removed from the process. This process creates substantial harm to children. The protections inherent in the First Amendment provisions regarding freedom of speech are not without some limit. Such guarantees cannot be rationally interpreted to include a right to abuse and exploit young children.

We are not going to produce mentally healthy and happy children by issuing an executive order that all children must be loved . . . but we can author legislation to protect them and give them a fighting chance in this world. To paraphrase Camus, who spoke for all of us who in some way work with children:

"Perhaps we cannot prevent this America from being an America in which children are tortured . . . but we can reduce the number of tortured children. And if you don't help us in this . . . Who else in this world can . . ."

STATEMENT OF THE HON. PETER W. RODINO, JR.

Three areas of child abuse recently have been brought forcefully to the attention of the the public and the Congress. It is time we put an end to all of them.

Two of these are closely related: The abuse of children in interstate pornography and prostitution rackets. The third is less obvious but equally unsavory: the sale of newborn infants across State lines for the purposes of adoption.

All of these are multi-million-dollar businesses which capitalize on the helplessness and innocence of children.

Legislation to establish criminal penalties for these practices has been introduced in the House and currently is pending before two subcommittees of the Committee on the Judiciary.

Bills pertaining to child pornography and prostitution have been referred to the Subcommittee on Crime whose chairman, the gentleman from Michigan (Mr. Conyers) has scheduled hearings to begin next Monday.

Legislation to ban the sale of children for adoption is before the Subcommittee on Criminal Justice, chaired by the gentleman from South Carolina (Mr. Mann). The subcommittee has held one day of hearings in San Francisco and other hearings are anticipated.

Before these measures are reported, however, it will be necessary to establish whether new laws or merely better enforcement efforts of existing ones are needed. The staffs of the subcommittees are making those studies now. In addition, the Subcommittee on Criminal Justice is seeking to ensure that any legislation reported on the adoption issue does not infringe upon the rights and jurisdiction.

Whatever the conclusions of the subcommittees, these are practices that should be halted.

In a number of major cities, children are victimized by adults engaged in the production of pornographic magazines and films, or in the procurement of prostitutes for customers in other States. It would be difficult to underestimate the emotional and physical suffering of these youngsters, boys as well as girls. Degraded and humiliated, treated as commodities not human beings, they face their adult years scarred by their experiences and unable to form lasting, normal relationships.

In a Nation where we place such a high premium on individual dignity, I find it especially repugnant that such businesses could flourish unchecked. Our intent is to ensure that criminal prosecution is assured for those who, for purposes of interstate commerce, induce, entice or force a child to commit sexual acts or to engage in various forms of sexual conduct.

Involved here is an area in which the Federal Government has always retained jurisdiction: The interstate traffic in goods and services that are clearly harmful to the citizens; in this case it would be the children who are so severely abused.

Much of the same principle is concerned in the sale of babies for adoption. This business depends for its existence upon a supply of unwanted or illegitimate babies, and upon the demand from people who have been unable to obtain a child for adoption from a legitimate agency or other source.

The children victimized by this racket are treated worse than cattle; bought and sold without regard for their welfare or future treatment at the hands of people whose qualifications as adoptive parents often are never established.

The costs of children on this market may run as high as $40,000, according to information gathered by Senator Williams of New Jersey who has introduced legislation in the Senate to control this terrible practice.

The essential decency and fairness of this Nation compel us to act on behalf of those children who cannot protect themselves from vicious and dangerous abuses committed by those who seek only a profit. I am confident that we shall fulfill that responsibility.

Statement of Hon. Henry J. Hyde, Illinois, Before the Subcommittee on Crime, House Judiciary Committee, May 25, 1977

Mr. Chairman, I appreciate the opportunity to submit a statement in support of H.R. 6747, a bill I co-sponsored with Mr. Dornan, called the "Child Abuse Prevention Act."

Webster's Dictionary defines pornography as "the depiction of erotic behavior (as in pictures or writing) intended to cause sexual excitement."

Surely there is no human behavior more despicable than that which entices young children to perform erotically for the excitement and satisfaction of sick minds.

The sexual exploitation of children by smut peddlers is rapidly increasing across the Country. No one knows for certain how many young minds have been permanently warped.

Who are the defenders of this filth? Perverted minds that seize upon loop-holes in state and federal laws; those moral cripples who believe the first amendment to the Constitution gives them the "inalienable right" to peddle pornography, as long as there is a dollar to be made.

Every Supreme Court—for 19 decades—has insisted that hard-core pornography does not and should not receive protection under the first amendment. Freedom is not a license to corrupt. The first amendment was not intended to permit the abuse and exploitation of children. To quote the *Chicago Tribune* editorial of May 19th:

"Not even the most ardent civil libertarian, not even the boldest advocate of first amendment rights, can reasonably defend conduct which can corrupt a child's mind and distort his attitude for the rest of his life. . . ."

Why haven't child pornographers been legislated out of business? The corruption of children, whether for the immediate sexual gratification of the corrupters or for the vicarious gratification of others through pornographic photographs, is a clear-cut disgrace which the law should be able to define and deal with.

There is a proliferation of state laws throughout the country—

Child molesting and sodomy—maximum sentence is two years, for the second offense, three years.

Aggravated crimes against nature.

Contributing to the delinquency of a minor.

—to name just a few, but those state laws are not strong enough to deal with the magnitude of this crime. Sgt. Lloyd Martin, who heads a special police unit set up in Los Angeles last September to deal with the problem, told the CHICAGO TRIBUNE recently, "We have no problem finding our sex offenders here, but we don't have laws to detain them." Martin cited two cases to illustrate his problem:

"A wealthy man in his 50s was arrested and charged with contributing to the delinquency of a three-year-old girl. The girl's mother, a prostitute who had consented to sex acts between the child and the man, testified against him and he then pleaded guilty. His sentence: THREE MONTHS OF PSYCHIATRIC TREATMENT.

"A prostitute who stars in pornographic movies and a photographer were arrested on charges of conspiracy to contribute to the delinquency of a minor after the photographer took pornographic pictures of the woman's five-year-old daughter. THE PAIR WERE ACQUITTED because the prosecution could not prove specific intent on the part of mother and photographer to contribute to the delinquency of a child."

Each of the 50 states have a responsibility to strengthen their own statutes involving the sexual abuse of children.

Congress can and should take action, and I strongly urge that we at the very least, adopt the "Child Abuse Prevention Act."

Congress should extend the Mann Act to prohibit the transportation of males as well as females across state lines, with emphasis on child pornography.

The issue before this Subcommittee, and before the Congress, is not simply one of attempting to define obscenity. The issue is protecting our children. The issue is not one of censorship versus freedom of the press. The issue is whether the grossest sort of perversion can find any Contitutional protection. If "consent of the governed" has any meaning, the answer is a resounding NO!

In closing, I want to quote the late Professor Alexander M. Bickel, an eminent Constitutional authority:

"There comes a time, and I believe we have reached it, when society is threatened by unbridled obscenity. Societies polluted by moral stench are not likely to survive.

"Like all civilized societies we have long had many rules which attempt to set moral standards and regulate sexual conduct. Regulation of pornography is not different. It is more than coincidence that societies that have decayed and collapsed—the Roman Empire is a perfect example—have generally done so in an atmosphere of steeply declining moral standards."

In the 95th Congress we have an opportunity to protect our children from such abuse. They cannot protect themselves. They do not have any power; they do not have a citizens' lobby. They deserve better, and we can give it to them.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 8, 1977.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime, House Judiciary Committee, Washington, D.C.

DEAR MR. CHAIRMAN: I would appreciate your making the attached statement a part of the Subcommittee's record of testimony for your joint hearings on June 10 with the Select Education Subcommittee regarding the sexual exploitation of children.

Thank you for your attention to this request.

Sincerely,

BOB WILSON,
Member of Congress.

STATEMENT BY HON. BOB WILSON FOR THE JOINT HEARING BEFORE THE SUBCOMMITTEE ON CRIME OF THE HOUSE COMMITTEE ON THE JUDICIARY AND THE SELECT EDUCATION SUBCOMMITTEE OF THE HOUSE EDUCATION AND LABOR COMMITTEE ON THE SEXUAL EXPLOITATION OF CHILDREN, JUNE 10, 1977

Mr. Chairman, I believe the legislation we are discussing today, of which I am a strong supporter, is probably one of the most important bills we may consider during this Congress, as it affects our country's most valuable asset—our children.

The continuing rise in the permissive attitudes of our society has accelerated the pornographer's search for subjects that will satisfy the increasingly jaded tastes of his customers. To this end, he has explored and depicted numerous avenues of sexual aberration—fetishism, homosexuality, sado-maschoism and bestiality, to the name but a few.

Having exhausted the lucrative possibilities of these areas, he is now engaged in exhibiting what I would consider the most base, the most disgusting, and the most outrageous concept of sexual activity possible—the use of children. Children in films, children in magazines, children in photographs, are depicted in all manner of depraved sexual situations.

When I say children, I mean just that—from a young as three years old on up. These kids have little, if any, sexual awareness, but they do have memories, and in later years the memory of what was done to them may very well warp them psychologically, injuring them mentally for life.

Who are these children? They belong to uncaring or sexually unstable parents looking to make a fast buck by pandering to the tastes of other individuals seeking peep-show excitement of any type. They are runaways duped into posing and performing by unscrupulous adults, who offer comfort and security in strange surroundings in trade for their participation. They are the childen of indifferent parents who either leave home or are cast out because the parents don't want them.

But the fact remains that they are children, and as such, I believe it is our responsibility and the responsibility of the courts to see that the outrages perpetrated on them are stopped and the animals that prey upon them heavily penalized.

Our children are our future. To permit them to be exploited in so despicable a manner is absolutely disgusting. Mr. Chairman, this legislation will enable us to take positive steps in stamping out this practice. We may not be able to impinge the tastes of some of the adults of our society, but we can certainly be effective in curbing the use of children by those individuals who cater to them.

A Psychiatrist Looks at Pornography

(By Melvin Anchell, M.D.)

"Why should anyone want to outlaw obscene movies?" a Los Angeles TV commentator editorialized at the end of his newscast. "These motion pictures have come under severe criticism by some people who are disturbed by their presentation of certain sexual activities," he continued. "O.K., let them express their opinions. And if they don't like them—fine, let them stay away from them. But do they, or I, have the right to keep someone else who is 'turned on' by these types of shows from enjoying them?"

Perhaps this commentator believed that he was voicing what he felt was an objective opinion on pornography. But I am sure that it would never occur to him to question the right of the health department to close down a restaurant serving a patron contaminated food.

The newscaster's point of view, and others like him who advocate public acceptance of pornography, arises in some measure from the premise that pornography causes no social or individual harm. But my medical opinion is that this assumption, unrelentingly promoted by pornographers, is fallacious.

The adverse effects of audio-visual obscenities permitted in today's entertainment media are sexually devastating to children and adults. The brief that pornography is unsuitable mental fare for children but harmless for adults is illogical. It is like saying a human being suddenly becomes immune to poison at age 18.

EFFECTS OF PORNOGRAPHY

The cumulative result of pornography on a young person is practically equivalent to the sad effects felt by the victim of a child seducer. In later life, a youth so molested fails, frequently, to make a mature adjustment. He remains stunted in self-love which is satisfied with immature forepleasures. In much the same way, a young person constantly exposed to oral, anal, exhibitionistic, voyeuristic and sadistic-masochistic sex acts often allows these perversions to take precedence over his genital sex aim.

In adults—even sexually mature ones—pornography has a sexually regressive effect. It encourages sexual behavior characteristic of perverts.

Pornography embellishes the physical sex life of free lovers and perverts who find it difficult to fulfill their complete sexual needs. But complete sexuality is more than a physical relationship. To be life-sustaining, human sexuality must encompass the mind as well as the body. The affectionate component is as important as the physical. Without companionship and affection, the sex act alone produces frustration that can lead to serious sexual maladjustments. Free lovers and sexual deviants are in a constant state of conflict with themselves. They project their conflicts onto others with sadistic vengeance.

Whether pornography and perversion are morally "right" or "wrong" is not my direct concern here. I leave that to the moral educators of our day. My interpretations are, however, influenced by what is "correct" and "incorrect." As a physician, I consider anything that supports life as correct and anything that prematurely causes death incorrect.

The regressive effect of pornography on sexual behavior brings on premature death. Any living thing—even a simple cell—that regresses to its primitive state dies before its time. For example, at a symposium on high blood pressure, which I attended recently at UCLA Medical Center, there was a graphic demonstration of death following such a return to an earlier type of life.

At the symposium, it was demonstrated that under the effects of high blood pressure, "civilized" muscle cells embedded in the walls of the eye arteries may return to the primitive cell type from which they were derived. When this happens, the regressed muscle cells go wild. They leave the wall of the artery and migrate into the lumen, shutting off the flow of blood. By stopping blood flow, they cause their own death and death of the eye.

On a microscopic scale, it is as though some mature individuals under the influence of pornography, in our society return to the sexual behavior of the savage, and in brutal ignorance destroy not only themselves but the society of which they are a part. This frightening analogy reflects what is happening to many of our communities as a result of the pornography and sadistic violence in our culture.

NEED TO CONTROL PRIMAL INSTINCTS

Primitive man glorified the sexual instinct itself; civilized man glorifies physical sex in the relationship with a loved person. Uncivilized societies readily tolerate perversion. They consider the sex life of deviants as normal.

Only by placing restrictions on primitive instincts have civilized societies emerged from barbarian hordes. Uncontrolled aggressive and sexual feelings (such as murder and indiscriminate sex) which served our cave-man ancestors long ago cannot be tolerated in civilized nations.

The standards of society play vital roles in the development of a child's social conscience. He is molded from a miniature Neanderthal into a civilized individual by family and religion. Religion is an inherent need in every person; and all great religions—especially Judaism and Christianity upon which Western civilization is founded—teach the need to control base aggressive and sexual feelings.

But many young people, exposed to ever increasing amounts of pornography and blasaphemy in today's media, are disdainful of established religion. To satisfy their unrequited needs, some turn to unrealistic Far Eastern sects, Satan, and occult worships that are not in accord with the life needs of any society, much less than that of ours. Others find faith in corrupt ideologies which replace their religious beliefs.

The debased sexual behavior that frequently becomes the life style for persons devoid of religion produces the first crack in the mental dam holding back regressions. Purveyors of pornography, along with their witting and unwitting cohorts, argue that this crack is beneficial to mankind. Their theory is patently absurd.

Under continued pressure from free and perverted love, the dam created by civilized man's conscience begins to break. Like a rampaging flood, all the primal instincts pour forth, wrecking and submerging the structures of civilization. And the alarming increase in sexual perversion, crimes, drug abuse and suicide attests to this fatal fact.

SEXUAL DEBASEMENT IN MOVIES AND TV

A favorite argument of pornographers for showing actual sex scenes in today's movies is that people in love engage in sex. Therefore, they say, producers have an obligation to make their pictures realistic. From a phychological standpoint, their impression of realism is incorrect.

Sex is an intimate affair. Two normal people in love seek solitude during sexual relations. Ordinarily, they cannot perform or participate in sex openly or with a group. People in love are intensely jealous of their physical expressions of love, and intrusions of pornographers arouse intense resentment.

If movie producers portrayed sex realistically, they would show lovers on the screen becoming impotent when performing sex openly before an audience. Furthermore, pornographers would realize that moviegoers, identify with the feelings of the characters in the story. Sitting in a theater with one's spouse, children or neighbors while having to watch the hero and heroine fornicate is embarrassing.

Another favorite dictum of pornographers is that nudity in movies and on TV is justified because nudity is an art form. They say that modesty in regard to the naked body is old-fashioned. In art, however, beauty of the entire nude body is the point of emphasis. On the other hand, the pornographer's emphasis on nudity focuses attention on the genitals and sexual activities related to these organs. Pornographers are not interested in promoting higher artistic values; they are selling erotica.

Concealment of the genitals in everyday life keeps sexual curiosity awake. Perhaps this is why the sexual instinct is most highly developed in man. According to anthropologists, one of the characteristics that distinguishes man from all other creatures is that a human being wears clothes.

Normally, public displays of nudity and sex cause embarrassment; they rouse feeling of disgust and shame. These feelings are natural barriers to perversion. They are fixed by heredity and occur without help from society and family. When disgust and shame fail to function, the subconscious reaction for shunning the abnormal and providing protection against contamination is lost.

Under the barrage of pornography, the natural barriers to perversion are destroyed and the individual becames defenseless.

A CASE HISTORY

Marty, age 17, came to me for treatment of his recurrent headaches. My experience as a father and as a physician practicing psychiatry has given me a certain rapport with teen-agers; and it was not long before Marty discussed with me his real problem.

It had begun four years previously, when Marty was in junior high. The son of affluent, professional parents, he was not only a bright student but was popular as well. One afternoon another 12-year-old boy invited Marty and a group of schoolmates, boys and girls, to come to his home to view a movie which his parents showed at grownup parties. Since every young person's ambition is to prove that he can act like an adult, he had an eager audience while he played host during his parents' absence.

The movie turned out to be hard-core pornography, graphically depicting sexual intercourse along with every type of perversion. After the initial embarrassment, the majority of the children were completely seduced. They attempted to outdo the adults in the movie then and there.

By the time he entered high school, Marty told me, his earlier promiscuity had ceased because he no longer "got a kick out of it." His problem, he said, was that he was impotent. For sexual stimulation, he now needed drugs. At present, he is a school dropout, finding release in drug-induced sexual fantasies.

NORMAL SEXUAL DEVELOPMENT STUNTED

Is there any hope for Marty to return to a normal life? It is most improbable. You cannot stretch the bones of a dwarf. A dwarf's sub-normal size is due to premature closure of the bones in childhood. Marty's impotence was due to his sexual growth having been stunted before mature development occurred in adolescence.

Likewise, adolescent girls engaging in premature sexual relations fail to develop their female psychology and to feel pride in femininity. For both boys and girls, chastity during adolescence is essential for developing the capacity to idealize love.

Marty's experience with pornography sated him with sex before the process of idealization was established in his relations with girls. As a result he holds girls in contempt. His unresolved affectionate longings have built up a continuous succession of frustrations. His bitterness and disappointment with carnal sex devoid of spiritualization have created such a reservoir of hate for females that his sadism is almost fiendish. He has gradually reverted to satisfying physical sexual needs entirely through voyeurism and sadism. His greatest delight is in having orgastic responses after beating his female cohorts. Sadistic pleasures have spilled inwardly into himself, and he is gradually destroying his life with drugs.

As a physician practicing psychiatry and internal medicine, many of my patients seek help for ostensibly physical reasons. With an increasing number, however, complete diagnosis reveals that many of their ills are related to the sexual abuses in today's environment. Contrary to the "sexpert" school, these sexual disturbances do not result from lack of exposure to or information about the "facts of life." They are largely brought about by free love and perversions.

The occasional adult or adolescent "escapade" into the neither world of pornography, with the recognition that the escapade is an exceptional incident apart from normal life, is not what we are discussing here. This has been going on for generations. However, when a society legitimizes pornography and permits it to become incorporated into cultural activities, then these are no longer escapades; they have become a way of life.

And this is what is happening today. Our modern culture is spawning indifferent youths devoid of idealized love. Its members have adopted cave-man sex practices consisting of promiscuity and deviances replete with exhibitionism, voyeurism and other unmentionable practices. And the result is that many commit suicide by taking their lives directly or by the overuse of drugs.

If members of this psychopathic sub-culture killed only themselves, it would be tragic enough. But it does not stop there. Some of them—the notorious Manson family, for example—commit violent crimes against others. All of them constitute a festering source of societal plague. Although still in the minority in relation to the general population, debauched youths provide a ready-made audience for the pornographic media; they spread the false gospel of its "benefits." Those among them who are talented and articulate not infrequently try to relieve their inner conflicts by spreading their ideologies through social work. Like the regressed muscle cells in the eye, members of this cult are noticeably infesting the healthy portion of our society.

Adolescents are particularly susceptible. Social acceptance by their peers is far more imperative to the adolescent than parental approval. If it is the "in" thing to accept pornography and perversity, to go to "adult" movies and watch "mature" TV shows—that's what adolescents will do, regardless of parental advice or their own consciences.

PARENTAL DILEMMA

Parents who have attempted to instill morality into the minds and hearts of their children are caught in a frustrating dilemma. They learn that it is impossible to enforce normal morality when these standards are not upheld by institutions in the community. The fatal accusation of being called "old-fashioned" often shocks parents into an intellectual impotence. They remember their own disagreements with their parents and they tend to equate them with the pornographically induced sexual rebellions of today's youth.

The parents' confidence in their own judgment is shattered by militant educators who insist that parents must "listen to their children." This is true, of course; but there must be "listening" on both sides. Faced with the choice of a futile attempt to salvage their child's moral standards or probable success in salvaging his love, they all too often capitulate by joing the adolescent "in" culture.

At this point the conscience of society should ring a four-alarm bell!

More devastating to children and society are parents like those of Marty's friend with the pornographic film, who are the root causes of their own children's sexual abnormality. I had though I was shockproof, until I was caught off guard by a mother during a recent Chicago TV interview on my book, *Sex and Sanity* (Macmillan Company, NYC, 1971).

She was the interviewer's assistant, a young woman of about 23, who obviously considered herself a modern intellectual. After the commentator had discussed some of the main points of my book with me, she took over the interview.

"I object to your point of view," she stated. "In my mind, sex is beautiful. And my husband and I are not ashamed of our actions. We invite our children into the bedroom to show them sex is beautiful."

My jaw gaped. "But we know that when young children observe sex between adults, it is regarded as a physical sadistic attack on the woman," I told her. "This is a psychological fact. I have many patients who were exposed to this in childhood, and as a result they have become exhibitionists-voyeurs and sadists-masochists. I can attest to this not only on the basis of clinical knowledge but also on the precepts of psychoanalysis. If you've read *Sex and Sanity*, you know that I think sex is beautiful. But sex is an intimate relationship between a man and a woman. When it is performed before an audience, whether children or adults, it becomes debased. You endanger the normal sexual development of your children when you do what you have just described."

By this time the commentator had recovered from his astonishment, and interposed "Let's forget she said that. In fact, she didn't say that."

He cut off my last line. I had wanted to tell her that it would have been kinder to expose her children to polio. Better to go through life crippled than sexually perverted.

The newscaster who considered explicit films on sexual perversion harmless, older parents who abandon their own standards of value, this young mother, and a great many others with similar attitudes fall into an increasingly large category of unwitting pitchmen for pornography. Many have been lured into permissiveness by the bait of liberal sophistication. They do not know that their regressions are showing: they are unaware of the fact that they are wallowing with the perverts. Such ignorance, masked as liberalism, can hurt a great many people.

Confucius warned, "He who knows not, but knows not that he knows not—he is a fool. Shun him."

NEED FOR ENTERTAINMENT

Can we shun these fools? We cannot simply turn the switch and shut them off. To do only that is passively to condone the spread of pornography, to let others be exposed to the plague in the vain hope that it will never touch us or anyone we love.

How, even with the best of intentions, can we ourselves practice or enforce upon others complete isolation from contaminating media? Pornography has pervaded our world to such a degree that today even many "G" rated movies deserve to be boycotted. Television has brought the same type of contamination into millions of homes, where the setting implies family sanction. Books are even more personalized; in fact, they were the first medium of entertainment to become explicitly pornographic.

Yet, to deprive the human being of entertainment's escape from daily tension is like depriving him of air or food. The need to release emotional and mental tensions in storyland is as basic as the need for breathing and eating. Picture stories on the walls of prehistoric caves attest to this fact. The storyteller has always been accorded an honored place from primitive campfire to banquet hall. Wandering minstrels were welcomed by peasants and nobles alike. Modern drama originated on the steps of medieval churches to help satisfy man's spiritual hunger.

Today, the vast entertainment industry is part and parcel of our Western civilization. The moguls of the movie and TV industries have ignored the needs of the sexually mature and have allowed our entertainment world to become as polluted as the air we breathe.

RESPONSIBILITY OF THE ENTERTAINMENT MEDIA

Ecology of human sexuality is as essential for survival as ecology of the earth. We are already tackling the huge task of ridding ourselves of smog and water pollution. We know we cannot do this by shutting off the air and draining the rivers and seas. Nor can we do it by closing down the factories and power plants. It must be done by popular regulation.

In a democratic society, popular demand can—if sufficiently wide-spread and sustained—force the entertainment industry to assume its responsibility in regard to civilized needs. That it can and should be called to account in this connection is substantiated by modern psychiatric research.

To cite briefly:

Dr. Alberta B. Seigel, at a symposium on violence at the Stanford School of Medicine, stated: ". . . People watch not only the social behavior of other people around them but also the behavior of individuals portrayed in the mass media—especially movies and TV."

Dr. Lawrence J. Hatterer of Cornell University, in a paper given before the American Academy of Psychoanalysis, concluded that homosexuality could be triggered by environmental stimuli. Among the most important triggers, Dr. Hatterer said, are suggestive homosexual literature, plays and movies.

Dr. Nicholas G. Frignito, Medical Director and Chief Psychiatrist of the County Court of Philadelphia, points out: "The most singular factor inducing the adolescent to sexual activities is pornography . . . the increase in sexual offenses among adults, too, is directly attributed to pornography."

WHAT CAN BE DONE?

I am a physician, not a legislator or a lawyer. But I do feel that these purveyors of pornography—who peddle free love and perversion without regard for others and simply for their own profit—should be controlled.

Child molesters and rapists are dealt with severely. The entertainment media seduce and ravish millions of children, adolescents and adults—and make money at it.

Why?

As Stalin, the greatest mass murderer in history, said, "The death of one man is a tragedy. The death of millions is a statistic." Conversely, when an impersonal statistic becomes translated into personalized tragedy to a sufficiently large number of people, public apathy is shaken. If it is shaken severely enough, action results. If intelligent leadership is at hand to direct that action, humanity moves another step forward.

Whether humanity moves forward or backward at this point in time depends very much on *your* convictions about pornography.

STATEMENT OF HONORABLE ROMANO L. MAZZOLI TO JUDICIARY SUBCOMMITTEE ON CRIME—MAY 23, 1977

I would like to commend my distinguished colleague and friend, Chairman Conyers, for promptly scheduling these hearings on a matter that is of grave concern to us all. The recent shocking public disclosures of the widespread involvement of minor children in pornographic films, books and magazines demand the expedient and serious consideration of this Congress.

At present there is no federal statute which specifically prohibits the distribution of obscene materials depicting children engaged in perverted sex acts. Forty-seven states and the District of Columbia have statutes which prohibit the dissemination of obscene materials to minors. But only six states have laws which prohibits the participation of minors in an obscene act. Twenty-three states are presently considering legislation in this area.

Clearly, the exploitation of minor children who are used and sometimes forced to participate in making pornographic materials is a national problem not limited to any one geographic area or socio-economic group. Studies have shown that over 30,000 boy prostitutes are currently being merchandised in this country; the figure for girl prostitutes is even more alarming—nearly 600,000. The Senate Subcommittee on Juvenile Delinquency has recently found that more than one million American children run away from home each year. Thousands of these young people who run away from home end up as victims, or sex slaves, of immoral profiteers. Magazines and films which are currently on the market depict children as young as three years old engaging in outrageous sexual activities. Studies have shown that at least 264 different magazines are being sold in adult bookstores across the country. dealing with sexual acts between children or between children and adults.

Child pornography tears at the basic moral fibre of this country. The pornography industry, which is a multi-million dollar business, is leaving irreparable emotional as well as physical scars on thousands of hapless young victims—who happen to be our children. The Los Angeles Police Department estimates that over 30,000 children under 17 were sexually exploited by adults in 1976. Sexual exploitation of children often leads them into other deviant activities such as prostitution, drug addiction, and crime.

The bills which this Subcommittee will consider on child pornography focus on protecting the children rather than dealing with the very difficult question of defining obscenity. Rather than wrestle with the larger question of what constitutes obscenity, which has hampered the prosecution of individuals under the obscenity laws, the bill that I am co-sponsoring along with 130 other Congressmen, H.R. 3913, would impose criminal sanctions on those persons who produce, distribute, or sell material depicting a child engaged in a prohibited sexual act or in the simulation of such an act.

Given the gravity of this situation and the need to insure the physical, emotional and moral safety of our children, I respectfully urge this Subcommittee to favorably report H.R. 3913.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 24, 1977.

Hon. JOHN CONYERS,
Chairman, Subcommittee on Crime,
Committee on Judiciary,
Washington, D.C.

DEAR JOHN: Now that your subcommittee has started hearings on the Child Pornography issue, I want to share two letters that I wrote to Dale Kildee about his bill. Although I am the ranking member of the Select Education Subcommittee that has jurisdiction over the bill and vitally concerned about this issue, I feel that the bill as drafted may not stop the overall problem of child sexual abuse.

Any thoughts or suggestions you may have in perfecting a final bill would be appreciated.

Sincerely,

JAMES M. JEFFORDS.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 11, 1977.

Hon. DALE E. KILDEE,
Cannon House Office Building,
U.S. House of Representatives,
Washington, D.C.

DEAR DALE: Following up on our recent conversation, I am taking this opportunity to share some of my thoughts, concerns and recommendations about your bill to prohibit sexual exploitation of children. As I have stated on many occasions, I certainly feel that something should be done to prohibit pornographic films showing certain sexual acts by children, however, I have serious reservations about the present bill as drafted. To illustrate my concerns I will use some fictitious and exaggerated examples to present the problems I see. I hope that you will accept my sincerity regarding this issue, and recognize that I am raising these questions in an effort to develop a bill that not only the entire Education and Labor Committee can agree on, but the entire Congress as well. In doing so I would hope that we can responsibly address the problem and at the same time be careful not to create any Constitutional or civil rights conflicts.

Scenario No. 1. Pete Innocent and Joe Mover are both seniors in high school. Joe Mover has been accepted at Yale University. Pete is 17 and Joe has just turned 18. Joe has been dating and going steady with Naomia Naive. Naomi is 15 years old and is president of her sophomore class. Joe relates to Pete that he was worried about how he is going to suffer through the long nights at Yale without Naomi. To solve his problem, Naomi agrees to pose for some nude and suggestive photographs. The photographs are taken and given to Joe. Joe is delighted and tells Pete than he will "be able to have enough sexual stimulation and gratification because of Naomi's pictures." The next day Joe asks Pete to take his trunk to the train station for shipment to Yale, and directs him to be "very careful" because the picture of Naomi are in the trunk. The next day jokingly relates this story to Red Crude, the local cop. Crude happens to tell the same story to the local FBI agent. The next week, Federal officials apprehend Joe and Pete. They appear before Judge Prude. Joe is charged under Section 8(a) and (b), and Section 9, paragraph (a)(1). Pete is charged under Section 9(a)(1). Pete and Joe, realizing their guilt, plead guilty. The Judge, incensed with the photographs, gives consecutive sentences to Joe Mover amounting to 55 years. He also imposes the maximum fine of $125,000 because he knows that Joe's father is wealthy. Pete Innocent is sentenced to 15 years under Section 9(a)(1). On the same day, in the same courtroom, in a similar, but unrelated case, Porno Pictures Corporation is found guilty under Section 9(a)(2) and receives the maximum fine of $25,000. The Judge reluctantly dismisses a charge against Smut Theatres, which showed the film, because showing child porno films is not prohibited. The questions here are not whether Naomi's posing for the pictures was right or not, but whether they were "abusive" to her. Also, were the actions of Joe and Pete "abusive" to her or anyone else? Furthermore, how can the bill be written to make the penalties fit the offense?

Scenario No. 2. The University of Vermont is in serious financial difficulty. The President, looking for every available dollar, authorizes the sale of the Shakespearean film library to the Shakespearean Arts Festival being held on the University campus by a profit-making enterprise. One of the films is "Romeo and Juliet", donated by a Hollywood film producer to the University. The film is shown at the Festival after the audience is informed of the sale by the President of the University. In the audience is Vin Vindictive, the local Sheriff, whose daughter has been refused admission to the University. Vin watches the film, realizes that the actress in the picture portraying Juliet is "only" 15 years old. After watching the beautiful, but rather explicit love scene, he arrests the President of the University. The President of the University appears before the same Judge Prude, who is horribly incensed that such pictures would be shown on the University's campus. He sentences the President of the University to 15 years in jail and imposes a maximum fine of $25,000.

I use these somewhat extreme scenarios in order to illustrate the areas in the proposed bill that could present potential problems in the event it became law in its present form. I believe they reflect the problems of attempting to develop a law on this subject. These examples (and there are many more) obviously raise very basic questions.

I think it would be helpful for me to review what I believe is the purpose of the proposed bill. Next, I will discuss the proposed bill from the point of view as to whether it prevents the "evils" it is intended to correct, and, finally, I will discuss the potential problems the bill creates along with the reasonableness (or lack) of its approach, as well as the likelihood of its being effective.

First, as to the purposes of the bill. Since the Subcommittee is trying to reduce child abuse, it would appear the obvious purpose of the bill should be to assist in preventing child abuse, and in this specific case, sexual abuse of children. In a more limited perspective, the purpose should be to prohibit the use of children in pornographic films wherein it is demonstrated that the activities engaged in by the children are sexual abuse and/or they become sexual abuse by having them filmed, or are likely to stimulate child abuse when viewed. The purpose of the bill with respect to this aspect I believe should be twofold: (1) To prevent the abuse of children who are being filmed, and (2) to prevent subsequent child abuse by those who may be stimulated as a result of viewing these films. This obviously is difficult, we must separate the question of what actually constitutes sexual abuse from an attempt to impose certain standards of morality. The proposed bill does not separate the issues and therefore, I believe, leads to certain Constitutional problems.

I would like to point out that the list of prohibited sexual acts under Section 10, can be separated into two broad categories: (1) Those activities which are considered to be abnormal sexual activities, and (2) sexual activities which under most conditions would be considered normal. The bill does not discriminate between them. It might be quite possible to argue that allowing a child to engage in bestiality, fellatio or cunnilingus is per se sexual abuse, but it is difficult to make that argument with masturbation. As an example, the movie, "The Exorcist" has a masturbation scene apparently performed by a minor, Linda Blair. I do not know whether Ms. Blair actually did the scene herself or whether a stand-in did it for her, but in the final version that was shown in theatres, it appears that Ms. Blair was performing masturbation using a Cross. Can it be said that allowing her to be filmed in a masturbation scene was "sexually abusive" to her and should be prohibited because it might stimulate or create the possibility that it will cause sexual abuse to occur? It would appear that if the Congress adopted the bill as written it would be imposing "moral standards" rather than prohibiting "sexual abuse."

The same can be said about sexual intercourse. The second example emphasizes this well. In the movie version of Shakespeare's classic "Romeo and Juliet" (which is certainly considered a masterpiece of literature), an actress, age 15, played a rather explicit but tasteful "love scent" which ended in "simulated" intercourse. One must ask whether this scene was sexually abusive to the 15 year old actress and/or whether the "simulation" is likely to cause others to sexually abuse children as a result of viewing it. Should we send her parents or legal guardians and/or the producers to jail for allowing the performance of this classic? Where is the line between "acting" and "Theatre" and "sexual abuse"? Furthermore, I see many other problems with the term "prohibited sexual acts" as set forth in the bill. Many psychologists and psychiatrists would say that a father striking or beating his child has sexual overtones and could be considered as "sexual sadism" or "any other sexual activity". I am sure the same is true of certain conduct which psychologists or psychiatrists would term as "sexual masochism". Further the term "any other sexual activity" is so broad that it might include many activities which would be difficult to show were "abusive" even if sold for profit. The term "nudity", "of any individual", "simulated . . ." fall into this category. It seems these terms stray a long way from "child abuse". At the same time it does not seem to me that to prohibit or send people to jail for activities which are private in nature (such as I described in my first example), should be legislated by the Congress. I am concerned that Section 8(a) and (b) and Section 9(a) does not require any profit motive, publication, or public showing to find a person guilty. Also, I am disturbed that the people who make the profits from these activities, if convicted, will receive a penalty much less than those who may be doing these acts privately. Further those showing the movie for profit will not be penalized (unless the term "sale" applies).

I believe that the bill must be redrafted substantially to take care of the problems that I have noted. I am sure there are other areas we will have to consider as well. I would suggest that there should be at least two different standards for "prohibited sexual acts". There are certain acts as I mentioned above that we all can agree ought not to be photographed using children which would be distributed for profit. I recognize that there are circumstances where certain sexual activities might be child abuse, or stimulate child abuse, however, they will have to be carefully determined after the Subcommittee hears and has a chance to examine expert testimony on what circumstances would or should constitute "sexual abuse". We must also address the distinction between a film made for "teaching" purposes to be used in a sex education program in a local school system and hard core pornography.

I am concerned about the bill's reliance entirely upon interstate activities to curb the abuses. It seems to me that a better approach might be found in explicitly tying the "abuses" in films to the "child labor laws". (29 U.S.C. Sec. 203 & 212) I also have a concern with respect to the ability to actually prohibit the "evils" intended to be curbed by the bill. As I understand it, the intent is to prohibit the "sale, transportation and showing of pornographic films" showing children in "acts" which would be considered "sexual child abuse". As written, I think the bill may have that effect, but at the same time I think as written, would probably be declared unconstitutional.

Finally, it is difficult for me to justify the primary emphasis placed in the proposed bill on the parents or guardians of the children and not on the people who are profiting from the films themselves. The purpose of the bill ought to be to keep such films off the market. I think the proposed bill ought to be limited to those individuals selling, shipping, showing, or transporting for a profit such films. (I might also mention that "videotaping" should also be included.) Many of the problems which are addressed in your bill would normally be considered "state" problems. Therefore, it would appear to be that the Department of Justice should assist in preparing a model state statute which states could use to correct whatever activity or activities should be banned.

In conclusion, I must raise a point that I have not really stressed in this letter; that is while we move to correct the sexual abuses that may occur as a result of using children in pornographic films, we must also be just as concerned and focus as hard on the overall question of sexual abuse of children. It seems clear from the hearings that the Subcommittee has held the use of children in pornographic films is only one small part of the problem of child sexual abuse throughous the country. Witness after witness has indicated that pornographic films are only the "tip of the iceberg", and that sexual abuse, including teenage prostitution and incest, are even greater problems. Any amendment addressed to correcting the sexual abuse problem in this country should addressed the entire universe of the problem and not just be limited to films.

SUMMARY

Problems: The Bill

(1) Does not have penalties for publicly showing pornographic films in which children are used.

(2) Can be interpreted to penalize primarily "non-child abuse" sexual acts and makes judgments as to what activities are sexual abuse with little if any justification on which to base the judgments.

(3) Does not distinguish between normal and abnormal sexual activities.

(4) Includes broad and ambiguous terms which in themselves are not necessarily abusive such as "simulated . . .", "nudity . . .", etc. When these terms are added to the provision "of any individual who may view", this term covers the entire population.

(5) Does not include viedo taping.

(6) Does not utilize child labor laws.

(7) Goes beyond any existing constitutionally accepted term under the Interstate and Foreign Commerce clause with the use of the term "may be transported".

(8) Includes minors with no legal relationship (as set forth in scenario No. 1).

(9) Prohibits legitimate theatre situations, i.e. Romeo and Juliet.

(10) Does not require "knowledge" in "sale" provisions as set forth in scenario No. 2.

(11) Does not distinguish between incidental filming of normal sexual acts for use in sexual education classes in schools and filming for pornographic purposes.

SUGGESTED APPROACH

Any final amendment should be comprehensive in nature and should address the entire problem of sexual abuse in America. It should cover both criminal and non-criminal aspects of the question. It should address the needs of children, parents and the public in general. Criminal provisions should be directed to both state and Federal problems. The Department of Justice should develop a model statute on this subject and assist states to whatever extent necessary to get them to adopt the statute. The Federal statute should rely on interstate commerce and child labor laws. It should differentiate between normal and abnormal sexual acts after proper evidence. The circumstances under which normal sexual acts being filmed would be "abuse" should be defined in greater detail. The solutions to the problem and the penalties involved must also be clearly defined.

Through this letter I have attempted to demonstrate my deep concerns about correcting the problem of sexual abuse among children and at the same time set down a basis on which Congress should act if we are to be truly reasonable, rational and responsible as we legislate. I am available and will look forward to working with you to come up with a bill which will accomplish the primary golas, without leading us into the extremely difficult areas of trying to rule out pornography and not imposing standards of morality.

Sincerely,

JAMES M. JEFFORDS.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C. May 20, 1977.

Hon. DALE E. KILDEE,
Cannon House Office Building,
U.S. House of Representatives,
Washington, D.C.

DEAR DALE: Since my letter to you of May 11, I have given more thought to the matter of how we can produce a bill which will accomplish our goals of trying to reduce sexual abuse of children generally, as well as eliminating their participation in pornographic movies specifically. Before giving some possible approaches, I would raise the problems of implementation and enforcement. In dealing with this problem, it seems that it is easier to propose a statute which sounds good, than it is to propose a statute which will have some effect in curbing the actual sexual abuse of children. The words will be meaningless unless they can and will be enforced. My concern can best be summed up with the following fictitious scenario:

> *Scenario*: Smut Pictures is formed by three sleazy characters who entice some children to engage in "sexual" activities by paying money to them or their parents. The filming takes place on the premises of a temporarily leased building under the fictitious name "Acme Productions". The films are processed and sold to pornographic wholesaler who is also using a temporary and fictitious front, and who in turn sells the films to an "adult book and film store" which sells or leases them to Joe's Porno Bar.

The point of likely enforcement in this situation might occur when the items are sold, and a law enforcement officer, posing as a buyer contracts for a sale or views the film being shown in the porno bar. If this situation is indeed likely than it is apparent that the only way the Federal government can hope to assist in eliminating these activities is by having effective enforcement against those selling or showing the pictures. In this situation it seems to me that it would be extremely difficult to prove the ages of the children (unless they are obviously very young) as to whether or not they were above or below the age of 16. Also, as set forth at length in my previous letter, it might be difficult to prove that the acts were actual "child abuse." We must remember the "beyond a reasonable doubt" burden that the prosecutor has. Therefore, as we develop a bill I think it is necessary to ask some pertinent questions.

(1) What specific activities can we prevent by Federal law which will actually reduce sexual abuse of children?

(2) What standards must be in place to insure that each element of the offense set forth in the law is provable?

(3) What provisions must be included to provide the means to insure that legitimate constitutionally protected activities will be able to continue?

(4) Can a bill be written that will be constitutional and still have the provisions to stop the problem?

(5) What actual controls would have to be incorporated into a bill that would actually stop the transportation of pornographic films using children?

(6) Can a bill be written which does not create an unnecessary or unreasonable burden on those charged with enforcement in order to insure that there will actually be enforcement?

(7) What will be the costs to actually enforce a Federal law in this area?

I am hopeful that the hearings conducted by the Select Education Subcommittee and the Judiciary Committee will provide answers to these and the previous questions I have raised. Having raised them, I would now like to suggest an approach which might be effective. First, I would define the proscribed activities under two categories. (1) As mentioned in my previous letter, I would set forth those activities upon which everyone could agree would constitute child abuse as being "abnormal sexual activities" and which are also generally prohibited for adults by many state statutes. (2) I would create a second category of possible sexual abuse situations which would use one of two possible tests: (a) the test as set forth in Miller v. California (see attached summary), and (b) a list of activities with such modifying words "that constitute child abuse."

I recognize that providing law enforcement officials with the ability to be able to prove that the age of the individual filmed is below 16 is most essential, but probably creates the most difficult problem. I would suggest some routes to explore as possible provisions.

(1) Require that for any film, video tape or pictures portraying sexual activities as set forth in the final statute which is transported in interstate commerce must be accompanied by a list of all persons under the age of 18 with their names, ages on the day the proscribed sexual activities were filmed, and their addresses at the time the certification was filed, and that such information must be certified to the Department of Labor. It would be an offense for any person to transport or to sell or show for profit such material without the certificate being available. This would place the burden on the person selling or showing to ascertain the authenticity of the certificate in order to protect him from prosecution under this section In other words, a counterfeit certificate would not be a defense. So that there will be no burden on the taxpayers, some fee should be required when the producer submits his document of certification. In addition, there should be a prohibition against any user of the film to justify or advertise his film is good simply because it has been certified. It is not my intent to establish a new bureaucracy here in Washington who goes around monitoring all activities, but if the certification becomes mandatory and the penalties for noncompliance are strong, the means for enforcement will be available.

(2) To protect constitutionally protected activities, it would seem advisable to provide administrative machinery for those persons producing a legitimate film, video tape or picture using children under 16 to be able to receive a certificate that the activities do not constitute child abuse under the second level of offenses as outlined above. Obtaining of such a certificate would only protect from violation under this section and not necessarily from state pornography laws. This approach conforms somewhat to the statutory approach with regard to child labor laws. It would, of course, be necessary to modify certain definitions and provisions of the Fair Labor Standards Act of 1938, however, from a review of the law I don't see any difficulty.

If you feel that these suggestions are worth pursuing, I would be happy to work with you on any amendments which would produce an effective bill.

Sincerely,

JAMES M. JEFFORDS,
Member of Congress.

Supreme Court of the United States

Syllabus

Miller v. California

APPPEAL FROM THE APPELLATE DEPARTMENT, SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

No. 70-73. Argued January 18-19, 1972—Reargued November 7, 1972—Decided June 21, 1973

Appellant was convicted of mailing unsolicited sexually explicit material in violation of a California statute that approximately incorporated the obscenity test formulated in *Memoirs* v. *Massachusetts*, 383 U.S. 413, 418 (pluarity opinion). The trial court instructed the jury to evaluate the materials by the contemporary community standards of California. Appellant's conviction was affirmed on appeal. In lieu of the obscenity criteria enunciated by the *Memoirs* plurality, it is *held* by the Court:

1. Obscene material is not protected by the First Amendment, *Roth* v. *United States*, 354 U.S. 476, reaffirmed. A work may be subject to state regulation where that work, taken as a whole appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and taken as a whole, does not have serious literary, artistic, political, or scientific value. P. 9

2. The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest, *Roth, supra*, at 489, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. If a state obscenity law is thus limited, First Amendment values are adequately protected by ultimate independent appellate review of constiutional claims when necessary. Pp. 9-10.

3. The test of "*utterly* without redeeming social value" articulated in *Memoirs, supra*, is rejected as a constitutional standard. P. 10.

4. The jury may measure the essentially factual issues of prurient appeal and patent offensiveness by the standard that prevails in the forum community, and need not employ a "national standard." Pp. 15-19.

Vacated and remanded.

Burger, C. J., delivered the opinion of the Court, in which White, Blackmun, Powell, and Rehnquist, JJ., joined. Douglas, J., filed a dissenting opinion. Brennan, J., filed a dissenting opinion, in which Stewart and Marshall, JJ., joined.

October 4, 1977.

Hon. John Conyers, Jr.,
Chairman, Subcommittee on Crime, House Committee on the Judiciary, Cannon House Office Building, Washington, D.C.

Dear Mr. Chairman: Enclosed you will find a statement which presents The American Legion's position on the sexual exploitation of children and addresses the provisions of H.R. 3913. It is requested that this statement be made a part of the record of the hearings recently held by your subcommittee.

We appreciate your attention to this matter.

Sincerely,

Mylio S. Kraja,
Director, National Legislative Commission.

Enclosure.

Statement of Paul R. Frinsthal, Assistant Director, National Americanism and Children and Youth Division, the American Legion

Mr. Chairman and Members of the Subcommittee: The American Legion appreciates the opportunity to express its views on H.R. 3913, a bill to prohibit the sexual exploitation of children.

Through its Children and Youth Division, The American Legion has supported numerous pieces of legislation dealing with the prevention and control of problems directly affecting the well-being of our nation's young people. The supportive role now exceeds five decades and will continue as long as children are in need of programs that will brighten their future.

Our Children and Youth program has a two-fold purpose: (1) to provide a setting conducive to every veteran's child having an adequate opportunity to realize his full potential and (2) to assure every American child, a similar opportunity. To achieve our first purpose, we endeavor to improve conditions for all children.

In 1960, The American Legion took its first stand on the issue of obscene literature. At that time, we stressed the importance of education and enforcement. Since then, no less than seven resolutions have been adopted by The American Legion, expressing our complete opposition to the production, sale and distribution of pornographic or obscene materials.

Attached to this copy are two resolutions adopted at our National Convention in Denver, Colorado, this year.

Resolution No. 311 expresses the attitudes of shame and anger concerning the exploitation of children in the production of pornographic materials. In light of this, we implore and support the passage of federal legislation that will put an immediate stop to this disgraceful blight on our society.

Resolution No. 242 directly attacks those individual purveyors who would exploit our youngest generation. It also points out that the problem of juvenile delinquency is magnified if we continue to allow the production, distribution and sale of pornographic material depicting children, of all ages, in sexually explicit scenes to go unchecked.

Sexual permissiveness, riding on a wave of changing attitudes, has spread rapidly throughout our society in recent years. Such permissiveness amid the adult population continues to be argued in terms of its positive or negative influence on children. Perhaps there is some association between changes in attitude and the practice of sexual activity among children but this association, in our opinion, is far less frightening than the disgusting behavior of those who photograph or film children engaging in sexual acts for financial gain.

Sexual exploitation of children by these unscrupulous "businessmen" is often a blatant violation of individual rights since, in most cases, children are either forced or encouraged to participate in these portrayals before they have developed their own attitudes toward sex. Such participation is oftentimes a traumatic experience for the child, leaving psychological scars which may never heal. These children are truly victims and they depend upon their responsible adults, especially our elected officials, to act as guardians over their individual rights.

The focus of any action to reduce sexual exploitation of children should be directed toward those who exploit them. We find that H.R. 3913, if enacted, would impose severe fines and other penalties upon anyone who knowingly is involved with the production or interstate shipment of material depicting a child engaged in prohibited sexual activity. We agree with this approach and support enactment of the bill now before you.

Denver National Convention.
Resolution No. 242.
August 23, 24 and 25, 1977.
Denver, Colorado.

SEEKING PROSECUTION OF ADULTS CONTRIBUTING TO DELINQUENCY OF OUR UNDER-AGE YOUTH

Whereas, The American Legion spells out clearly in its Preamble one of its cardinal principles, to-wit: To inculcate a sense of individual obligation to the community, state and nation;

Whereas, The basic strength of The American Legion is with the local Post in the communities in which such Posts exist and function; and

Whereas, We are mandated to community involvement which includes the pursuit of excellence for the good of the respective locales and also the elimination of objectionable operations who prey on the young people; and

Whereas, The issue of pornography, sexual permissiveness and the brazen presence of dens of iniquity such as "massage parlors" is reaching into many neighborhoods in increasing number, with very little resistance given to this growing invasion of smut, sex films and other gimmickery; and

Whereas, In some situations large movie screens of drive-in theaters attract many under-age viewers from outside the confines of such establishment, and thus, "X" rated movie scenes have a deteriorating effect on our young people, and because of the multiplicity of such operation also have easy access to the ware available from the many corruptible sources; and

Whereas, Many communities in the United States, through persistent resistance have succeeded in eliminating or put under strict control such operations from within their midst; and

Whereas, Leadership and a force of strength must be made available to put an end to this system of corrupting our young, which inspires open sexuality and sex deviation, common-law marriages, commune living and which destroys the ruggedness of much of our young; now, therefore, be it

Resolved, By The American Legion in National Convention assembled in Denver, Colorado, August 23, 24 and 25, 1977, That we encourage activities on the Post level, against the purveyors of sin and sexuality whose very presence in communities deteriorates the spirit of good and wholesome living; and, be it further

Resolved, That all operators of such outlets be advised if the community objects to its presence and that the operation will be under constant surveillance for illegal sales or admissions, as well as seeking the prosecution of adults who contribute to the delinquency of under-age customers.

Child Pornography

Whereas, The American people have been understandably shocked by recent startling revelations of the use of children in pornographic magazines and films; and

Whereas, The use of children as subjects in the production of pornographic materials has a devasting effect upon these young people which is a disgrace to our society; and

Whereas, Existing laws dealing with the production, sale and distribution of pornographic materials are inadequate as they do not fully protect against the use of children in the production of such materials; and

Whereas, Many state penal codes aimed at the prosecution of those people involved in developing, promoting and selling child pornography are either nonexistent or in need of clarification; now, therefore, be it

Resolved, By the American Legion in National Convention assembled in Denver, Colorado, August 23, 24 and 25, 1977, That state legislators be encouraged to evaluate and make appropriate improvements in existing laws aimed at those adult individuals involved in the child pornography business; and, be it further

Resolved, That we urge the strengthening of existing federal legislation by the United States Congress to make penalties severe enough to eliminate the production, distribution and sale of materials that use children in sexually explicit scenes and we urge that adequate funding be provided when necessary to accomplish these goals.

Sexually Abused Children: Fact, Not Fiction

(Prepared for the National Council on Crime and Delinquency, Washington, D.C. by Marianne E. Cahill, NCCD/AFL–CIO Research Assistant)

Table of Contents

I. Background of Child Abuse:
    A. Definition of sexual abuse
    B. How does it fit into child abuse
II. The Abused Child:
    A. General characteristics
    B. What are the types of sexual abuse
    C. Psychological repercussions
    D. Legal rights
III. The Abuser:
    A. General characteristics
    B. Reasons for abusing the child
    C. Psychological repercussions

- **IV. The Family:**
    - **A. General characteristics**
    - **B. Reactions to (1) the abuser, (2) the abused**
- **V. Available Programs and Legal Implications:**
    - **A. Who reports the abuse**
    - **B. Where are abuse reports referred**
    - **C. What programs are available**
    - **D. Is the majority solution on correction of the family behavior or removal of the offender**
- **VI. Reforms:**
    - **A. Informing the public**
    - **B. Development of further treatment programs**
    - **C. Uniform state regulations**
    - **D. Training of professionals (for detection purposes)**
- **VII. Conclusions and Recommendations.**
- **Bibliography**
- **Contact List**
- **Addenda**

Special thanks to Gwen Ingram and Chuck Johnson for "taking me in" and to my parents. Without their continuing support, the learning experience surrounding the research of this article would not have been possible.

PART ONE—BACKGROUND OF CHILD ABUSE

The sexual abuse of children by members of their family is an area of child abuse which has too often been neglected. Incest, by its very nature, is a crime which is regarded as a taboo subject. People, using an illogical method of reasoning, believe that their refusal to acknowledge the existence of incest will cause it to cease. Unfortunately, such thinking does not work. Just as by closing one's eyes does not eliminate the reality of darkness, incest continues to flourish without regard to the social attitude held by men. With the continuing increase in incest (at least in the reporting of incest) one soon discovers that incest is not an individual crime, but one which can lead to drug abuse, prostitution and the allowance by sexually assaulted individuals to permit the sexual abuse of their own children.

These reasons formulated the incentive for the research found in this paper. While there are no national statistics yet available on the offenses of the sexual abuse of children, a major finding from the book Protecting the Child Victim of Sex Crimes Committed by Adults states that:

"The problem of sexual abuse of children is of unknown national dimensions, but findings strongly point to the probability of an enormous national incidence many times larger than the reported rate of physical abuse of children."[1]

If this statement is accurate, children are being sexually abused with a greater frequency than ever imagined.

At this point, the question generally arises as to what is actually meant by sexual abuse? What does it include? Where does incest fall into this definition? This definition has been a major problem throughout the United States. While all 50 states have laws regarding the "crime" of incest, the definition and penalties within these statutes differ widely. While some states have specific laws detailing what is meant by sexual abuse, others just place it as a category under the heading of Child Protection laws. As a result, there exists much confusion over whose jurisdiction is responsible for which acts, what legal avenues are to be implemented and so forth. Although there has been some change within the laws of all 50 states during the past 15 years, there is no single model statute which has been adopted by a majority of the states. Perhaps the most complete and workable definition of sexual abuse is that of the State of Maryland which reads as follows:

"'Sexual abuse' shall mean any act or acts involving sexual molestation or exploitation, including but not limited to incest, rape, carnal knowledge, sodomy or unnatural or perverted sexual practices on a child by any parent, adoptive parent or other person who has the permanent or temporary care or custody or responsibility for supervision of a minor child."[2]

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[1] Vincent DeFrancis. *Protecting the Child Victim of Sex Crimes Committed by Adults.* (Denver: American Humane Association, 1968), p. 203.

This type of a statute is much clearer in meaning to law enforcement personnel than the following definition which is the more common found generalized definition:

"The term 'child abuse and neglect' means the physical injury by other than accidental means, injury resulting in a mental or emotional condition which is a result of abuse or neglect, negligent treatment, sexual abuse, maltreatment, mistreatment, nontreatment, exploitation or abandonment, of a child under the age of 18 or of an individual who appears to be mentally retarded."[3]

This all inclusive definitions of child abuse fails to elaborate on what actions are included under the general term of sexual abuse. Since it would be close to impossible to prosecute an individual under such a vague statute, it appears more logical that state legislatures would desire to review such laws and restate them in more specific terms, for in its current state, the sexual abuse statutes are practically useless.

One suggestion would be the separation of sexual abuse from the battered child syndrome definition of child abuse, inasmuch as the effects produced by the two actions differ widely. Sexual abuse of a child often causes a more emotional reaction as opposed to the actual physical bruises and broken bones suffered by a "battered" child. With this division, and the further addition of a suitable definition for emotional neglect to the agreed upon definition of sexual abuse and physical abuse, the possibility would exist to incorporate these statutes under the general heading of "Child Protection Laws."

As a result, the revised statutes created by a review of the areas covered by the broad term of "child abuse" would be much more feasible than they are in their present form. This review is of the utmost importance, because while the child victims of sexual abuse are very limited in their abilty to protect themselves from further abuse, so too are law enforcement officals limited by the present statutes in dealing with the perpetrators of such acts.

PART TWO—THE ABUSED CHILD

Who are the sexually abused children of America? The preceding statement seems to be of a simple nature. Unfortunately, for several reasons, the answer to this question is far from simple. Due to a lack of consistent methods in the reporting and treatment of the sexual abuse of minors, as well as the lack of a uniform definition of what actions are included in the term, a large amount of data regarding this abuse does not exist.[4] Dr. Vincent DeFrancis, a well-known child advocate, stated in Protecting the Child Victim of Sex Crimes Committed by Adults (which includes the findings of a three-year study on the sexual abuse of children) that:

"The paucity of information regarding the incidence of sex crimes against children and the absence of data assessing the impact and effect of the sexual victimization on the child victim's emotional health result in a general failure to mount a coordinated attack on this national problem."[5]

The absence of a uniform definition also prohibits the collection of any national statistics. However, the major problem in the recognition of child sexual abuse lies with the public view towards the act. Most adults carry with them a stereotyped view of the dirty old man or the sexual pervert who hangs around on street corners or in schoolyards just waiting to pounce on an innocent, unsuspecting child. Yet, out of the reported cases of the sexual abuse of children, the following statistics have been derived:

65–85 percent of the offenders are known to the child victim, 55–58 percent are close family friends or family members only a small proportion are strangers (Kinsey, DeFrancis).[6]

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[2] Annotated Code of Maryland, Article 27, § 35A (part 8), pp. 64–5.

[3] Delaware Code, Annotated Article 16, § 902, p. 12.

[4] Michael Wold, "State Intervention on Behalf of Neglected Children: A Search for Realistic Standards." Stanford Law Review (Stanford: Stanford University, 1975), p. 98.

[5] DeFrancis, op. cit., p. 206.

[6] Child Sexual Abuse Task Force, "Fact Sheet on Child Sexual Abuse," (San Jose: NOW Child Sexual Abuse Task Force, 1977).

The attitude held by most adults upon hearing such facts is one of disbelief. Adults encourage the concept that incest is something that happened long ago. It could not possibly happen today. In an issue of Children Today, Suzanne Sgroi stated that the:

"Recognition of sexual molestation in a child is entirely dependent on the individual's inherent willingness to entertain the possibility that the condition exists." [7]

With the refusal of adults to recognize that such a problem is truly widespread across the country, the chances of making sexual abuse an issue of national concern are minimal.

While there presently is a need for a uniform national method of reporting cases of sexual abuse, many counties and towns have developed their own individual system for handling the various aspects of child sexual abuse. Three forms for the reporting of sexual assaults can be found in the appendix of this article. The forms are those which are presently in use by the District of Columbia, the Department of Social Services of the State of New York and the Children's Division of the American Humane Association. The first form was developed by the District of Columbia to "be used for legal purposes, including the investigation of the alleged crime and prosecution of persons alleged to have committed the crime of sexual assault." [8] This is a uniform report which is concerned with the medical report of any sexually assaulted persons. It fails to provide a distinction between sexually abused children and adults; it also does not request any knowledge of the perpetrator of the crime other than his name, if it is known.

In comparison, the social services form for New York is geared more towards reporting the specific injuries of the battered child as opposed to one which has been sexually assaulted. However, this second form does allow for the listing of any alleged perpetrators and their relationship to the child.

The last form is that which is presently in use by the Clearinghouse on Child Neglect and Abuse Reporting sponsored by the Children's Division of the American Humane Association. This appears to be the most adequate form for reporting any cases of child sexual abuse. The form asks for the medical history of the child, the history (if one exists) of any previous abuse, and the socioeconomic background of the family and perpetrator. While there is space on this form to designate which type of sexual abuse occurred (i.e. incest, rape, molestation or unnatural acts), it fails to go into any further details of what actions are specified by that terminology (i.e. what is covered by the medical report of the District of Columbia form). With an incorporation of the good points found on each of the forms, it would be possible to develop a suitable form to be used nationwide in an effort to develop a more accurate picture of the factors surrounding the sexual abuse of children.

From the statistics gathered through the implementation of the various reporting techniques, several characteristics have been derived in regards to the types of children who are the victims of sexual abuse:

(*a*) the average victim of sexual abuse (from molestation to completed intercourse) is a female, age eleven,[9] with victims as young as 2½ months old.[10]

(*b*) the type of sexual abuse ranges from indecent liberties, incest, intercourse, sodomy, homosexual behavior/assault and sexual assault in this order with indecent liberties comprising over 50 percent of sexual abuse cases, with incest being involved in approximately 20 percent of such cases.[11]

(*c*) females as opposed to males are more often victims of sexual abuse (70 percent to 30 percent as shown in statistics of reported cases).[12]

(*d*) in up to 85 percent of child abuse cases involving sexual abuse, the perpetrator is known to the child, and is often a member of the family or a close friend of the family.[13]

These are the averages which have been extracted from the available statistics on child sex abuse. But what about the children who make up the statistics? What happens to them?

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[7] Suzanne Sgroi, "Sexual Molestation of Children," Children Today, May–June 1975, p. 20.

[8] Form for Medical Examination of Allegedly Sexually Assaulted Persons of the District of Columbia, 1971.

[9] Ellen Weber, "Sexual Abuse Begins at Home," Ms. Magazine, April 1977, p. 64.

[10] Sgroi, op. cit., p. 18.

[11] Child Protective Services of Hennepin County Welfare Department, "Child Abuse—1976," p. 9.

[12] Ibid.

[13] Child Sexual Abuse Task Force, op. cit.

A child who has been the victim of sexual abuse suffers from feelings of guilt, fear, anger and disgust. The child is being abused, in many cases by a parent who warns her that she should not tell anyone, especially her mother, what he (the father, stepfather, adoptive father) is doing. When such abuse becomes too much for the child to handle, she finds herself the unhappy recipient of various psychological repercussions. If the offending perpetrator has been removed or punished by the authorities on the word of the child, the child will suffer many anxieties in relation to her feelings of guilt. In an effort to ease these tensions, the child will often resort to running away, becoming promiscuous (to "hurt" her father or brother for doing such a thing to her), prostitution, crime, involvement with drugs and/or alcohol, and in some cases, she will even withdraw emotionally from the world. Statistics show the following:

(A) Drug Abuse—70 percent of adolescent drug addicts were involved in some form of family sexual abuse (Minneapolis, Minnesota study)—44 percent adult female drug addicts have been involved in incest (Odyssey House).

(B) Prostitution—75 percent of adolescent prostitutes have been involved in incestuous relationships (Minneapolis, Minnesota study)—22 percent of 200 adult prostitutes in Seattle, Washington area had been incestuously molested (Jennifer James, Washington State University).

(C) Runaway Children—sexual abuse has been identified as one of three main reasons why children run away from home (Runaway Newsletter '75).

These reactions can be witnessed in the following case studies:

Linda—Linda is a white, 28-year-old Mormon lower-class female from Utah. She was adopted by her aunt and uncle at birth.

She was raped by her uncle when she was five years old, and continued having sexual intercourse with him for five years.

At age 9, Linda began using thorazine. She started using speed and pills at 17 and cocaine, heroin and morphine at 21.

She has three children, all in a foster home. The oldest child is twelve years old.

Her excessive promiscuous life of prostitution and repeated contacts with unclean men has resulted in cancer of the cervix and total hysterectomy.

Linda presents herself to the world as she feels; she has permanently tattooed a tear under her left eye.[15]

L.N.—L.N. is an 18 year old white Protestant, with one older and one younger brother. Her childhood was spent in the American southwest with her father, a skilled machinist and her mother, a teacher. L.N. reports that as a child her mother was physically abusive to her, at one point assaulting her in the face and breaking several teeth. Alienated from her mother, she looked to her father for protection and when at age of 12, he began having sex play with her, she reported she welcomed the attention and the chance of being closer despite the fact that she felt "it" wasn't "right." Shortly after this, her parents divorced and her father moved out to live with another woman. At this point L.N. began running away from the mother's home until the courts granted her to the custody of her father, because her mother stated she could not control her.

The sexual play with the father continued when he was granted custody of her. At age 14, the father, while drunk, forced L.N. to have intercourse with him. Shortly thereafter, L.N. told her stepmother about the situation, but the stepmother refused to believe her, stating she was misinterpreting his "fatherly affection." Thereafter, intercourse occurred at least monthly, for approximately one year, usually when the father was drunk. Around this time L.N. sought escape by using drugs. At age 16 she was rescued by being arrested for possession and put in a juvenile home. She has not had to return home since then, but told no one of the reasons for her drug use until we [the Odyssey Institute] began this study and other women had spoken out.[16]

These case histories are but two of the thousands which have been reported. As in the second case, if the child overcomes her fears and tells her mother what is happening, the mother will often refuse to believes her. Or, in many cases, the daughter who is being abused by her father (or father-substitute) is "performing adult housekeeping duties. The mother has abdicated her role and unconsciously tells her daughter 'to take care of your father in all his needs.' "[17]

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[14] Ibid.

[15] Judianne Densen-Gerber, M.D., "Why Help the Children?" Odyssey Institute, Inc., Book 2, pp. 9–10.

[17] Marge Hanley, "Sexual Abuse Is a Family Problem," Indianapolis News, Mar. 24, 1977.

[16] Ibid., Book 3, pp. 12–13.

At this point, the child knows that what she is doing, whether it be with her father, brother, uncle, etc., is wrong in the eyes of society. She feels an overwhelming guilt when the sexual activity she has had with a relative is exposed (either willingly or unwillingly) and the male perpetrator is punished. She still loves that individual and his removal from her environment adds to the child's increasing feelings of guilt. Society makes her the "guilty" one for taking part of a taboo act and the law "punishes" her along with her family, by taking the breadwinner away. To the child who is caught in this emotional catch-22 conflict, the consequences can be devastating. What can be done to treat these children?

Psychological counseling plays a huge part in maintaining the child's emotional outlook on the situation. Group counseling with the child and her family make it possible for them to accept the abuse and to work around it and bring their life back to normal. But this counseling is rarely available. After the initial arrests and interviews, the child is too often neglected and is not given the proper psychological treatment. In fact, there exists only one child sexual abuse treatment program in the United States.

With the increasing awareness of sexual abuse in the United States, it is imperative that more psychological help is made easily accessible to the victims of sexual abuse and their family.

Having discussed the emotional rights of the child, what are his/her legal rights? Does he/she have any? When the Supreme Court ruled (on in re: Gault) in 1967 that juveniles involved in a criminal proceeding were entitled to most of the legal rights of an adult in the identical situation (with the exception of a trial by a jury of their peers) no mention was made of the rights of a child in a neglect or dependency hearing. If a child is being brought before a court for determination as to whether he is being abused by his parents, the child has no guaranteed right to protect his own interests. Yet it is the child's future which is at stake during such a proceeding. If the parents are entitled to counsel as is the petitioner, why does a child need his own attorney? The general conception is that the petitioner is representing the child's best interests. Unfortunately, the petitioner usually is pursuing a solution which he thinks is best for the child and he rarely concurs with the child to see what the child desires. The philosophy of the juvenile court was originally established so that the "kindly old judge" would be responsible for the child's welfare.

Today, the judge really does not have the time to establish a rapport with the child and ask him where he would like to be placed. The parents' attorney should not represent the child because there would exist a conflict of interest. It is for these reasons that a child needs to have individual representation. He needs someone to make the court aware of his needs and desires and who will also explain to him exactly what is occurring during the court hearings. The rights of any individual as guaranteed by the Constitution and the Bill Rights should not be restricted by a minimum age requirement. Sadly, though, a guarantee to these rights for children in relation to the due process of law will have to wait until a case is delivered to the Supreme Court for deliberation before they can be freely given to all children.

PART THREE—THE ABUSER

The fact that children are sexually abused with more frequency than the statistics show has been acknowledged in the preceding pages. But who is the abuser of these children? Is a child sex abuser some type of pervert or maniac? Are there socio-economic factors which lead to this type of abuse? As few statistics exist regarding the incidence of sexually abused children, so too are the statistics limited with regard to the abuser. However, through research and treatment programs, several identifying factors have been isolated:

(*a*) in almost 50 percent of the reported sex abuse cases the abuser was the father or stepfather of the child.

(*b*) in 70 percent of the cases, the perpetrator was over the age of 31.

(*c*) the family income averaged between $7–$11,000.

(*d*) 50 percent of the abusers were caucasian, with 12 percent being black.

(*e*) in 66 percent of the cases, the identity of the abuser was known to the child.[13]

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[13] Child Protective Services, op. cit., pp. 9–11.

(*f*) in many cases the provider has lost his job or he is going through an emotional low-ebb period in his life.[19]

The reasons for incestuous relationships vary from case to case. As mentioned earlier, often times a wife will tire of her role and press her daughter into service. In other situations, incest may be handed down from generation to generation. Society, too, must share the blame for the rising problems of incest and sexual abuse. According to a counselor from the Child Sexual Abuse Treatment Program, it is:

"the sexual climate of our society which helps to create the problem. We teach our girls to be lolitas and sexual provocateurs from the time they're 2. They get it from television continually, how to flounce their hair, how to shake their butts. . . ."[20]

One case study included an in-depth look into the father's reactions to the sexual abuse of his daughter, who, afraid to inform her mother of the abuse, has turned to an adult friend who in turn, reported the abuse to the police. His story reads as follows:

JIM—Jim, Leslie's father, a successful accountant, is in his mid-thirties when he becomes aware of deep boredom and disenchantment with his life. He feels stalemated in his job and his prospects for advancement are poor. There is growing estrangement between himself and his wife. She no longer seems proud of him; in fact, most of her remarks concerning his ability as a provider, father, or husband are critical and harassing. Their sexual encounters have no spark and serve only to relieve nervous tension. He fantasizes romantic liaisons with girls at work; but he has neither the skill nor courage to exploit his opportunities.

Jim finds himself giving increasing attention to Leslie. Of all his children, she has always been his favorite. She is always there for him, accompanies him on errands, snuggles close beside him as they spend hours together watching TV. (His wife has no interest in this pastime; at night she is either taking classes or studying with her classmates.) As Leslie cuddles beside him he becomes keenly aware of her warmth and softness. At times she wiggles on his lap sensuously somehow knowing that this gives him pleasure. He begins to caress her and "relives the delicious excitement of forbidden sex play during childhood," as one client expressed it. But this phase is soon engulfed by guilt feelings as the relationship gets out of hand and he finds himself making love to her as if she was a grown woman. Between episodes he chokes with self-disgust and vows to stop. But as driven by unknown forces he continues to press his sexual attention on her. He now senses that she is trying to avoid him and no longer receptive to his advances. Though he doesn't use physical force he relies on his authority as parent to get her to comply. He becomes increasingly suspicious of her outside activities and the seemingly continual stream of boys who keep coming to the house. With a sinking feeling he notices that she is beginning to respond to one of the boys. He cannot control the feeling of jealousy the boy evokes or his craven attempts to force his daughter to stop seeing him.

Jim's trance is suddenly shattered one evening as he returns home from work. A policeman emerges from the car parked in front of his home and advises him that he is under arrest. Numb with shame and fear he is transported to the police station for questioning. Though informed of his constitutional rights, he finds himself making a fully detailed confession. Jim is eventually convicted on a felony charge and given a jail sentence of one to five years. His savings are wiped out by the lawyer's fee of several thousand dollars. He finds imprisonment extremely painful: from a respected position in society he has fallen to the lowest social stratum. His follow inmates call him a "baby-raper." No one is more despicable. He is segregated and often subjected to indignities and violence. His self-loathing is more intense than that of his inmates. He gradually finds some relief in the fervent resolution that, given the chance, he will more than make it up to his child, wife, and family. A well-behaved inmate, he is released from jail in nine months. But he has lost his job and after weeks of job-hunting settles for a lower position. Jim faces an uncertain future with his wife and family.[21]

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[19] Hank Giaretto, "A Therapist Says the Hush-Hush Scandal of Incest Occurs in 'Average, Respectable' Families," People Magazine, May 9, 1977, p. 48.

[20] Ibid., p. 49.

[21] Ray E. and C. Henry Kempe, *Child Abuse and Neglect: The Family and the Community* (Cambridge, Mass.: Bellinger Publishing Company, 1976), pp. 147–8.

This particular case was handled by the Child Sexual Abuse Treatment Program. In their handling of incest cases involving a father-daughter relationship (the most frequent type reported to the police and prosecuted by the courts),[32] the father is not excused for his behavior. In most cases, the father, according to Hank Giaretto:

"must face the daughter and accept full responsibility for whatever happened. We tolerate no excuse along these lines. We (CSATP) don't care how provocative the youngster was. If the father succumbed to that, then he is delinquent in his parental responsibility. And he says this very clearly to the girl." [33]

The fathers must acknowledge their guilt and work with their family through counseling to resolve the crisis. In other cases of sexual abuse, the perpetrator is punished by the courts, but his punishment continues in the form of society's inability to accept his failure to maintain an appropate relationship with a minor. Many psychological repercussions are enforced by such reactions, which create a multitude of problems for the sexual abuser of children. These problems stem from the permanent break-up of their immediate family to a loss of suitable employment and to total alienation from friends and relatives.

The most common type of sexual abuse however, is that of brother and sister. According to two studies (Kinsey in 1953 and Gebbhard in 1965, brother-sister incest is 5 times more common than that of father-daughter.) These cases are rarely reported and they are usually handled within the family and mainly by the mother. In an interview with Sergeant Roy A. Perry of the District of Columbia Metropolitan Police Sex Squad, he stated that mothers usually discover the son "experimenting" with his sister and upon such a discovery, she will teach the boy that he does not do these things with his sister. In cases such as these, the matter is adequately handled within the immediate family, without any long-term repercussions of guilt. It is the father-daughter incest which causes the most psychological problems.

PART FOUR—THE FAMILY

In examining the socio-economic factors of the family of an average sexual abuse victim, one discovers that the myths which have been generated over the years regarding the crimes of incest and sexual abuse are just that—myths. Incest is found in all parts of the economic spectrum and it affects people of all ethnic origins. Since the sexually abused child is more readily visible to the surrounding community if his family is poor, it tends to feed the belief that incest only occurs in poor families. It seems quite likely that society has a tendency to protect those abusers who come from an upper class family. They find it relatively easy to hide such actions from their neighbors and their accessibility to excellent legal counsel helps to protect them from undergoing prosecution. Regardless of the visibility of crimes involving sex abuse, it still remains that sex abuse can and does occur in families of every religion, race, and economic background.

Generally, the statistics from the Hennepin County Welfare Department (of Minnesota) regarding the families of sexually abused children point out the following conclusions:

(a) In over 70 percent of the reported cases of child sex abuse, there were two parental figures residing in the home.

(b) The average number of children ranged from 3 to 4 per family, with the abused child usually being the first or second-born.

(c) Over 40 percent of the parents were legally married while over 25 percent were divorced or separated.

(d) Approximately 38 percent of the parents had a loss of control during discipline of the child or in tolerating the child's disobedience or provocation.

(e) Over 60 percent of the mothers had either attended high school or had graduated from high school while 40 percent of the fathers had only attended grade school or had graduated from the eighth grade.

(f) Fifty-nine percent of the families had an income of less than $16,000, with 34 percent earning no more than $7,000.

(g) Approximately 40 percent of the families were receiving some income supplement.[34]

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[32] Ibid., p. 146.

[33] Giaretto, op. cit., p. 49.

[34] Child Protective Services, op. cit., pp. 4–6.

These statistics support the assumption that sexual abuse is more readily reported among lower-income families, but this is not to say that sexual abuse does not occur in upper-class families. Once again, it merely points out that, the visibility of sexual abuse is higher among the lower-income population.

What is the reaction of the family towards the abused child? Do they tend to offer the child a supporting hand or do they alienate the victim? As it was stated earlier, the mothers of many victims often refuse to believe the allegations of sexual molestation made by their children. It seems almost impossible for them to grasp the harsh reality of the anguish that their children are suffering until it is too late for them to prevent the physical and emotional damages from these actions. They often will ignore the situation until the girl becomes pregnant or the abuse is reported by someone else. These actions can be seen in the following case studies:

(1) The daughter, when she was eight years old, told the mother that she was being molested by the father. The mother slapped her face and called her a bad girl. The case was reported by the mother, *seven years later* (emphasis added) when the victim attempted to commit suicide. (Father returned home one month after the initial complaint was filed.)

(2) All four daughters complained to the mother that the father was manipulating (or attempted to manipulte) their breasts and vaginas. The mother told them that they misunderstood their father, he was merely trying to show affection. The case was reported by a relative, when the oldest girl became pregnant by the father.[25]

Through these case studies, and others of a similar nature; it appears that most sex abuse cases are reported to outside authorities as the result of a family disturbance (usually when arguments become too heavy to handle or the girl becomes pregnant). The indications from the stories above illustrate the unwillingness on the mother's part to intervene in the abuse. Sometimes, as Yvonne Tormes points out, the findings which are elicited from the families involving sexual abuse suggest "an overburdened mother, possibly tired because of early and prolonged childbearing, and would lend some support to Riemer's hypothesis of the offender's sexual deprivation as contributing to the incestuous offense."[26] Nevertheless, when the abuse has been exposed, the mother is encouraged to admit her lack of responsibility in protecting the child and that it is important for her to try to re-establish a relationship with the child which is free of any feelings of guilt or jealousy toward the other. The problem which does exist is that the majority of sexual abuse cases are never reported to the authorities, so the mother is often unaware of the situation and is helpless in responding to the needs of her abused child.

What is the attitude of the family toward the abuser? In the cases of reported father-daughter incest, the mother's reactions vary greatly. She alternates between jealousy and concern for her daughter.[27] She questions whether she can save her marriage. She is bombarded with the attitudes held by her friends and relatives (and society) toward her "immoral" husband. Has she failed as a wife and mother? These emotions must be dealt with, but it must be done logically. The most important step is the encouragement of the entire family undergoing counseling and psychotherapy. They must learn to live with the knowledge that sexual molestation (in whatever form) of their child has occurred and they must build a stronger family to survive the crisis. These feelings will be discussed within the context of the review of the Santa Clara County Child Sexual Abuse Treatment Program in the following section.

PART 5—AVAILABLE PROGRAMS AND LEGAL IMPLICATIONS

The sexual abuse of children does exist. The statistics are adequate proof. But who reports this abuse? Who is responsible by law to report this abuse and what legal protection is offered to these individuals? Most child protection laws state that those people who have the legal responsibility to report any suspected cases of sexual abuse include private physicians, clinic physicians, hospital clinical personnel, nurses, teachers, school personnel, day care center employees, public and private social agencies, the courts, law enforcement officers, the coroner, relatives and neighbors. This group may vary from district to district, but this provides a list of basic individuals who would come into contact with children on a regular basis. For those people who honestly suspect that a child is being sexually abused, and subsequently report this to the proper authorities, the law will usually protect him from any civil or criminal charges stemming from a proven false report.

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[25] Yvonne Tormes. Child Victims of Incest (Denver: American Humane Association, 1968), pp. 11–12.
[26] Ibid., p. 26.
[27] Kempe et al., op. cit., p. 148.

Most reports are refered to the sex division of the local police depatment or the youth services division, if one exists. Upon receiving notification of a suspected case of sexual abuse, they will begin investigating the complaint. If the complaint proves to be true, the police will then interview the victim to obtain a statement. This procedure must be handled with extreme caution. In a publication by the International Association of Chiefs of Police, Incorporated, the following has been suggested:

"In interviewing a child sex victim, the police officer must establish the elements of the offense without causing the victim, who is likely to be confused and frightened, unnecessary anguish. Frequently, the emotional reactions of the parents and problems of communication between the officer and the child complicate the interview process. Throughout the interview, the police officer should exercise tact, compassion, and patience, keeping the welfare of the child first in his mind." [28]

This opinion was also held by Sergeant Perry of the D.C. Metropolitan Police Sex Squad. It is important that the child's exact statements are recorded as opposed to paraphrasing them for clearer specificity. This is to insure that the version of the abuse which is reported is an accurate one on the part of the victim.

What programs are available for handling the victim of a sexual assault? Is the main emphasis on complete removal of the perpetrator or on working with the entire family to resolve the problem? Research findings have uncovered the existence of one program in the United States (only one), which was established to deal specifically with the child victims of sexual abuse. This program is the Santa Clara County Child Sexual Abuse Treatment Program located in San Jose, California. It was founded in 1971 by Henry Giaretto, a humanistic psychologist.

The program was developed on the theory that "family therapy would be a good first step towards constructive case management of sexually abusive families." [29] Giaretto discovered, however, that for family therapy to be successful, it was necessary to conduct individual therapy for the child, the mother, and the father before entering into family counseling. As a result of this discovery, these six steps are taken in treating the victim of sexual abuse and his family.

(1) Individual counseling (for the child, his mother and father).
(2) Mother-daughter counseling.
(3) Marital counseling (a key step if the family desires to re-unite).
(4) Father-daughter counseling.
(5) Family counseling, and
(6) Group counseling.[30]

The program has several goals which they hope to achieve in using this format. They exist to provide immediate counseling to child victims of sexual abuse and their families. Their desire is to work on correcting the home situation of the family, rather than removing the abuser outright, which usually destroys the family unit. They coordinate the available resources from both private and public agencies which assist in the treatment of sexual abuse victims and their family. The program attempts to employ techniques which allow the individual to return to society in a positive, contributing role. They encourage the development of self-help groups and they provide the necessary guidance to insure the success of these programs. They seek to inform the public and the professional world about the CSATP and they continually work on developing information and training materials for other communities who desire to formulate their own program to treat the child victims of sex abuse.[31]

Through the use of different types of counseling, the Santa Clara County Program uses the methods of self-assessment and confrontation, self-identification and self-management to enable the family and the child to help themselves through verbal communication. The success of CSATP has been exceptional. In the treatment of over 250 families, no recidivism has occurred. Due to this overwhelming response, CSATP is now being used as a model for the development of similar programs throughout California. However, at this writing, the CSATP remains unique to Santa Clara County.

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[28] International Chiefs of Police, "Training Key No. 224—Interviewing The Child Sex Victim" (Gaithersburg, Md.: Professional Standards Division, 1975), p .1.

[29] Kempe, et al., op. cit., p. 149.

[30] Ibid.

[31] Ibid., p. 150.

Other programs which currently exist include child abuse hotlines, rape crisis centers and hospital sexual assault services which are expanding to include the recognition and treatment of the sexual abuse of children. In the District of Columbia, Children's Hospital National Medical Center has set up a child abuse program which presently does not handle sexual abuse cases but they will do so at some time in the future (when their grant from HEW allows it). According to Mary Holman, the director of the program, very little incest is reported because of the population which lives in Washington. In most cases, by the time the female child reaches age 9 or 10, the male figure in the household is not her father. If she were to be sexually assaulted, it would not be included under the present laws covering incest. Also, due to the possibility that the family might lose its income supplement if the case is reported, the mother or child will usually refrain from registering any form of a complaint. With this attitude so prevalent (out of 200 reported child abuse cases, only 5 or 6 were incest) the introduction of a program along the lines of CSATP might prove to be quite futile.

Outside of CSATP then, there does not exist any treatment facility which is designed to handle sexually assaulted/abused children. Most programs are geared towards the physical abuse of children because it is so readily apparent and visible to the naked eye. Until an awareness of the sexually abuse of children is created to rectify this situation, these kids do not stand a fighting chance to successfully withstand the emotional and physical crises of being sexually abused.

PART SIX—REFORMS

What can be done about the sexually abused child? What avenues are available for the child advocate to explore? The most stressing problem is that of the public's attitude towards incest and sexual abuse. The constant attempts to hide such acts with a veil of secrecy make it difficult for the victims of such abuse to seek help. The first step in combatting the sexual abuse of children lies with improving the public awareness of the problem as it exists today. This awareness should serve a three-fold purpose—it should aid in reducing the incidence of sexual abuse, encourage and aid those families seeking help in dealing with such a problem and it should encourage these families to come forth and seek help. The major task of any child advocate is that of destroying the threatening taboo against family sex, for it only serves to prevent the reporting and treatment of family sex abusers.

If society has any desire to aid these individuals, this step must be their first.[illegible] Public awareness and discussion should be promoted, and their consciousness concerning the child sexual abuse victim must be aroused.[illegible] When this initial move is made, the public will no longer be able to ignore the problem of sexually abused children but instead, they will sanction the identification and treatment of such children and their families.

The second step is for all agencies involved in sexual abuse cases to coordinate their efforts in handling the family in order to prevent the possibility for any long-lasting trauma to occur. From the law enforcement officials to the involvement of the local child protection agency (usually under the supervision of the Department of Human Resources) to the courts, it is absolutely necessary for all these agencies to work together in treating the family. In cases of incest and sexual abuse committed by a family member, it is absolutely necessary (in order to avoid extreme psychological guilt and anger) that each agency be aware of what course of action is being pursued by other agencies, so their own services can be adjusted to complement those being undertaken by the various individuals involved in the case.

The final step for any community in providing assistance to sexual abuse cases is the establishment and continual development of programs which are specifically designed to meet the physical, emotional and legal needs of a sexually abused child and his family. This type of program has been established within Santa Clara County. As the CSATP has proven to be an overwhelming success, it only seems logical that this type of program be established through-

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[illegible] Weber, op. cit., p. 66.
[illegible] Sgroi, op. cit., p. 44.

out the country. The only way to adequately treat all the victims of sexual abuse (the child and his family) is to have a program (i.e. CSATP) designed specifically to treat this particular problem. With the creation of such programs dedicated exclusively to handling the sexual abuse aspect of child abuse only, a specialization can be developed to handle any problems stemming from a case of sexual abuse because all of the program's time would be devoted solely to that one purpose.

As a continuation of this treatment model, such self-help groups as Parents Anonymous, Daughters United, and Parents United were created to reinforce the ability of an individual to refrain from returning to a pattern of sexual abuse or to deal with the problem of being the victim of an abuser. These groups were formed by people who were actually involved as participants in cases of sexual abuse. Their purpose is one motivated from the desire to help themselves and others who are involved in similar situations. The success rate of these groups have been phenomenal. Of the 400 families treated by the CSATP and referred to a self-help group in the past five years, only two repeat cases of sexual abuse have occurred.[34]

A final reform that could be considered is the development of uniform state regulations regarding the sexual abuse of children. In the present criminal codes, individuals convicted of an incestuous offense can be penalized from "a $500 fine and/or 12 months in Virginia, to a prison term of 1 to 50 years in California."[35] Since the passage of the 1974 National Child Abuse Prevention and Treatment Act, a majority of states have reviewed their statutes regulating such actions. However, the definitions, treatment provisions, and penalties of sexual abuse and incest, still vary widely from state to state. If the public and the professional world is to be made aware of the increase in the incidence of sexual abuse and treat it accordingly, it would simpilfy matters greatly if a uniform code was established along with the provisions of the Child Abuse Prevention and Treatment Act. This uniformity would also aid in the establishment of a nationwide method of reporting cases of sexual abuse.

The development of uniform standards would be of great help to those individuals who are involved in the world of children. It would enable professionals to pursue further training in recognizing the symptoms of child sex abuse and treating these children. With the constant push for public awareness of the increasing number of sexual abuse cases, the taboo against such actions can be lifted, allowing the public to bring sexual abuse out of the closet and into the light.

PART SEVEN—CONCLUSIONS AND RECOMMENDATIONS

The sexual abuse of children is a widespread problem throughout the United States. With increased public awareness and knowledge of this problem, perhaps a permanent method of attack can be established. It is imperative for society to recognize the factors which lead to the sexual abuse of children, so that programs can be developed to prevent such abuse from occurring. However, this can only be done if society is forced to look beyond their rose-colored glasses and see the world as it actualy exists. When the taboo against the act of incest and sexual abuse has been destroyed, a solution to the enigma can and will be established.

A part of this taboo-breaking process includes a reeducation of the public. The following recommendations for further research in this area can be made as follows:

(1) A complete state by state comparison of present statutes and laws related to incest and the sexual abuse of children (which usualiy falls under the heading of Child Protection Laws).

(2) An extensive public survey to classify the attitude held by the average population with regard to the topic of the sexual abuse of children and the reasons for these attitudes.

(3) Contacts of further organizations/individuals interested in the exposure and treatment of child victims of sexual abuse.

(4) The development of a comprehensive program for the reporting of sexual abuse.

(5) The development of a program for the institution of child sex abuse treatment centers across the country (based on the CSATP).

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[34] Weber, op. cit., p. 67.
[35] Kempe, et al., op. cit., p. 145.

BIBLIOGRAPHY

American Humane Association. *Marshalling Community Services on Behalf of the Abused Child.* Denver: Children's Division.

Annotated Code of Maryland. (State laws)

Besharor, Douglas. "Counsel For the Child in Neglect and Dependency Hearings," *Fifth National Symposium on Child Abuse.* Denver: American Humane Association, 1975.

Child Protective Services of Hennepin County (Minnesota) Welfare Department. *Child Abuse—1976.* Minneapolis: Child Protective Services, 1977.

Child Sexual Abuse Task Force. *Fact Sheet on Child Sexual Abuse.* San Jose: NOW Child Sexual Abuse Task Force, 1977.

Delaware Code, Annotated. (State laws)

Densen-Gerber, Judianne, M.D. *Why Help The Children—Books 2 and 3.* New York: Odyssey Institute, Inc.

DeFrancis, Vincent. *Protecting the Child Victim of Sex Crimes Committed by Adults.* Denver: American Humane Association, 1968.

Fontana, Vincent J., M.D. *Somewhere A Child Is Crying.* New York: MacMillan Publishing Company, Inc., 1973.

Form for Medical Examination of Allegedly Sexually Assaulted Persons of the District of Columbia, 1971

Giaretto, Hank. "A Therapist Says the Hush-Hush Scandal of Incest occurs in 'Average, Respectable' Families," *People Magazine*, May 9, 1977.

Hanley, Marge. "Sexual Abuse is a Family Problem," *Indianapolis News*, March 24, 1977.

International Chiefs of Police. *Training Key #224—Interviewing the Child Sex Victim.* Gaithersburg, Maryland: Professional Standards Division, 1975.

Juvenile Justice and Delinquency Prevention. *Report of the Task Force on Juvenile Justice and Delinquency Prevention.* Washington: U.S. Government Printing Office (for LEAA), 1976.

Kempe, Ray E. and C. Henry. *Child Abuse and Neglect: The Family and the Community.* Cambridge, Massachusetts: Bellinger Publishing Company, 1976.

League of Women Voters of California. *A Guide to the Juvenile Justice System.* Sacramento: League of Women Voters, 1975.

National Broadcasting Company. *Weekend.* Aired on Saturday, May 7, 1977. (Transcript on *incest*).

Public Law 93-247. The Child Abuse Prevention and Treatment Act, 1974.

Schucter, Arnold. *Child Abuse Intervention.* Washington: U.S. Government Printing Office (LEAA), December 1976.

Sgroi, Suzanne. "Sexual Molestation of Children" *Children Today*, May/June 1975. (Volume 4, Number 3).

Stoener, Herb. *Plain Talk About Child Abuse.* Denver: American Humane Association, 1973.

Stucker, Jan. "I tried to fantasize that all fathers had intercourse with their daughters." *Ms. Magazine*, April 1977.

Tormes, Yvonne. *Child Victims of Incest.* Denver: American Humane Association, 1968.

Wald, Michael. "State Intervention On Behalf of Neglected Children: A Search for Realistic Standards." *Stanford Law Review.* Stanford: Stanford University, 1975.

Weber, Ellen. "Sexual Abuse Begins At Home," *Ms. Magazine*, April 1977.

Younger, Evelle. *The Problem of the Abused and Neglected Child*, Sacramento: California Department of Justice, 1975.

INTERVIEWS

Sergeant Sequin of the Youth Division of the D.C. Metropolitan Police

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New York Department of Social Services, Emergency Children's Services, Central Registry for Child Abuse and Maltreatment, 241 Church Street, New York, N.Y. 10013. (information on file).

Parents Anonymous, National Office, 2810 Artesia Blvd., Redondo Beach, California 90278. (Information on file)

Child Welfare Resource Information Exchange, Suite 501, 2011 Eye Street, NW. Washington, D.C. 20006. (202) 331-0028. (Contacted regarding a printout—no information received).

Dr. Kirson Weinberg, Loyola University of Chicago, 6523 N. Sheridan Road, Chicago, Illinois 60626. (No contact made)

Dr. Michael Bennett, Beth Israel Hospital, 330 Brookline Avenue, Boston, Massachusetts 02215. (No contact made)

Child Welfare League of America, 1346 Connecticut Avenue, NW., Washington, D.C. 833-2850 (only handles national issues).

National Coalition for Children's Justice, Kathy Lyons, (202) 293-1806. (no information according to KL).

Dr. Margaret Beyer (Marty), National Youth Alternatives Project, Suite 502, 1346 Connecticut Avenue NW., Dupont Circle Building, Washington, D.C., 785-0764. (Very helpful to Carolyn Saffold in regards to juvenile prostitution—no specific information on sexual abuse)

Dr. J. Robert Lebsack, Children's Division, American Humane Association, 5351 S. Roslyn Avenue, Englewood, Colorado. (Information on file)

Hank Giaretto, Child Sexual Abuse Treatment Program, Santa Clara County, 840 Guadalupe Parkway, San Jose, California 95110. (Information on file)

Dan Smith, National Center for Juvenile Justice, 1309 Cathedral of Learning, Pittsburgh, Pennsylvania 15260. (No information available)

Mary Anne Bollen, Juvenile Rights Project, ACLU, 22 East 40th Street, NY, NY 10016. (ACLU statement on child pornography)

League of Women Voters, 714 Alhambra Blvd., Sacramento, California 95816. (A Guide to the Juvenile Justice System)

Child Welfare League of American, Inc., 67 Irving Place, NY, NY 10003. (Information on file)

Weekend, c/o NBC, 30 Rockefeller Plaza, NY, NY 10020. (Transcript on "incest" program on file)

Children's Defense Fund, 1520 New Hampshire Ave., NW., Washington, D.C. 20036, (202) 483-1470. (No specific information)

National Council of Organizations for Children and Youth, 1910 K Street, NW., Washington, D.C. 20006. (Directory for the Child Advocate)

Judge Lisa A. Richette (Founder of CAPE), Judge of the Court of Common Pleas, City Hall, Broad and Market Streets, Philadelphia, Pa. 19107. (No information received)

Mrs. Bennie Stovall, MSW, Supervisor, Children's Aid Society, Detroit, Michigan 48226. (313) 831-3300 (Still awaiting response to request of 8/11)

David Smiley, National Office for Social Responsibility, 1901 N. Moore Street, Rosslyn, Virginia 22209, 558-4545. (No contact made)

Barbara Wilkes, D.C. Runaway House, 1743 18th St., NW., Washington, D.C. (202) 462-1515.

Juvenile Justice Clinic, Georgetown University Law Center, 600 New Jersey Ave., NW., Washington, D.C., (202) 624-8262. (Handles field work for third year law students)

Center for Women Policy Studies, Suite 508, 2000 P Street, NW., Washington, D.C. 20036. 296-2284 (872-1770) 9-5 M thru F. (Has a lot of background information on sexual abuse—Great source—they are very friendly)

Mary Holman, Child Protection Center, Children's Hospital, 111 Michigan Ave., NW., Washington, D.C., 835-4478.

National Clearinghouse on Child Neglect and Abuse, P.O. Box 1319, Denver, Colorado 80201. (Information on file)

National Center for the Prevention and Treatment of Child Abuse and Neglect, 1001 Jasmine Street, Denver, Colorado 80220. (Information on file)

Martin Coyne, Unit Supervisor, Child Protection Services, Hennepin County Welfare Department, A-15 Government Center, 300 South Sixth Street, Minneapolis, Minnesota 55487, (612) 348-7056. (Information on file—very friendly)

Select Committee on Child Abuse of the New York State Assembly, 270 Broadway, New York, N.Y. 10007. (No response.)

Mayor's Task Force on Child Abuse, St. Vincent's Hospital, 7th Avenue and W. 11th Street, New York, N.Y. 10003. (No response.)

Ohio Department of Public Welfare, Children's Protective Services, State Office Building, 65 S. Front Street, Columbus, Ohio 43215. (Child Abuse/Neglect Prevention Kit.)

Margaret M. Kennedy, Director, Department of Children and Family Services, State of Illinois, 1 North Old State Capitol Plaza, Springfield, Illinois 62206. (Current statutes of incest and sexual abuse.)

Mrs. Cornelia Jones, Public Information Chairman of AAUW, Box 168, Dover, Delaware 19901. (Helping the abused and neglected child: An explanation of the Mandatory Reporting on Child Abuse.)

Children's Defense Fund, 1520 New Hampshire Ave., NW., Washington, D.C., (202) 483–1470 (No information on sexual abuse.)

Ann Brown, Child Advocacy Center, 1025 15th Street, NW., Washington, D.C. 20005, (202) 638–4031. (Very friendly—provides "resource" individuals to contact.)

Dr. Barbara Guinton, Chairman, Child Abuse Team, Howard University Hospital, 2041 Georgia Avenue, NW., Washington, D.C., 745–1592.

Marjorie Margolies, Reporter for News Center 4, 686–4111. (Has done research on incest.)

Mr. Williams, Department of Human Resources, Child Protective Services, 629–3895.

Sgt. Perry, Sex Squad, D.C. Metropolitan Police, 300 Indiana Avenue, NW., Washington, D.C., (202) 626–2000. (Provided a police perspective on sexual abuse—most helpful!)

D.C. Youth Division, 17th and Rhode Island, NE., Washington, D.C., 626–2327. (Provided background on the handling of sexual abuse cases.)

Ira Lourie, Child Abuse Coordinator, National Institute of Mental Health, Communications Center, Office of Communications, 5600 Fishers Lane, Rockville, Maryland 20852. (Printout on file.)

Jay Olsen, National Center on Child Abuse and Neglect, Children's Bureau, Office of Child Development, U.S. Department of Health, Education, and Welfare, Washington, D.C. 20201, (202) 755–0590. (Information on file.)

Child Abuse and Neglect Research, 1411 K Street, NW., Washington, D.C. 20005. (Moved—no response.)

Concerns of Children (A division of Odyssey Institute, Inc.), 24 West 12th Street, New York, N.Y. 10011, (212) 741-9666. (Information on file.)

National Committee for Prevention of Child Abuse, Box 2866, Chicago, Illinois 60670. (Information on file.)

Ms. Natalie Nash, Child Abuse and Safety Project, Office of the Corporation Counsel, 410 E. Street, NW., Washington, D.C., (202) 629–3024. (Referral by Sergeant Perry.)

Child Sexual Abuse Task Force, P.O. Box. 26, San Jose, California 95109.

Nan Hune, Juvenile Court, Washington, D.C. (Referral by Sergeant Perry.)

ADDENDA

A. Forms: District of Columbia Assault Form, New York Social Services Form on Child Abuse, National Study on Child Neglect and Abuse, Reporting Standard Form.

B. Computer Program presently being processed by the American Humane Association to determine specific statistics regarding the sexual abuse of children.

C. A Recommended Reading List.

D. Case Study—The Story of Mary C.

E. Advertisement of the National Committee for Prevention of Child Abuse.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Human Resources

MEDICAL EXAMINATION OF ALLEGEDLY SEXUALLY ASSAULTED PERSONS

PLEASE FOLLOW INSTRUCTIONS ON REVERSE SIDE

I. Identifying Information:

1. Name ____________________
2. Birth Date ____________ 3. Age ____________
4. Sex ____________ 5. Race ____________
6. Address ____________________
7. Phone ____________________
8. Alleged Assault: Date ________ Time ________
9. Police Notified: Date ________ Time ________
10. Medical Exam: Date ________ Time ________
11. Hosp. (Check) DC Gen. ________ Children's ________
Other ________ Name ________

II. General Physical Exam:

	A. HEAD	B. FACE	C. NECK	D. CHEST	E. ABDOMEN	F. BACK	G. ARMS	H. LEGS
1. Bruises								
2. Lacerations								
3. Blood								
4. Fractures								

Description: ____________________

Does exam show medical evidence of injuries suggestive of recent violence? Yes ______ No ______

III. Gynecological and/or Anal Exam:

	A. PERINEUM	B. HYMEN	C. VAGINA	D. CERVIX	E. ANUS
1. Bruises					
2. Lacerations					
3. Blood					

Description: ____________________

Does exam show medical evidence in or around vagina or anus suggestive [illegible] penetration? Yes ______ No ______

IV. Mental Health Evaluation:

	YES	NO
1. Apparently Normal		
2. Lethargic		
3. Crying		
4. Agitated		
5. Angry		
6. Verbose		
7. Hysterical		
8. Unconscious		
9. Other		

VII. Testing:

	DONE	NOT DONE	VAG.	ANAL	RESULTS
1. Sperm					
2. Gonorrhea					
3. Syphilis					

VIII Treatment:

	DONE	NOT DONE	TYPE &/OR RESULTS
1. Vaginal Cleansing			
2. Prophylaxis			
3. Medication			
4. X-ray			
5. Suturing			
6. Hospitalization			
7. Other			

V. Additional Observations or Remarks: ____________________

VI. Medical Evaluation:

In your opinion is the evidence above compatible with?

	YES	NO	UNABLE TO DETERMINE
1. Vaginal Intercourse			
2. Anal Sodomy			
3. Forced Vaginal Intercourse			
4. Forced Anal Sodomy			

IX. Instructions for Follow-up

	GIVEN
1. Oral	☐
2. Written	☐

I hereby authorize use of this report and any other report incidental thereto by the Department of Public Health and the Metropolitan Police Department of the District of Columbia for official purposes.

____
SIGNATURE OF PATIENT

____
SIGNATURE OF PARENT OR GUARDIAN OF MINOR

____
SIGNATURE OF EXAMINING PHYSICIAN

____
FORM CHECKED BY MEDICAL OFFICER

____
SIGNATURE OF REPRESENTATIVE OF METRO. POLICE DEPT.

DHR 112

Original to Police Representative
Copy to Hospital or Physican

6/71

PURPOSE OF FORM

This form for recording the results of the "Medical Examination of Allegedly Sexually Assaulted Persons" is a form designed to be used for legal purposes, including investigation of the alleged crime and prosecution of persons alleged to have committed the crime of sexual assault. The medical examination and information recorded on the form are aimed at obtaining a record of medical evidence with regard to questions indicating occurrence of *recent forced penetration* and, in addition, evidence of previous vaginal penetration.

INSTRUCTIONS FOR PREPARING MEDICAL EXAMINATION FORM

I. Identifying Information:

All items in this section shall be completed by the representative of the Metropolitan Police Department prior to examination by the physician.

II. General Physical Exam:

III. Gynecological Exam &/or Anal Exam:

Use checks in appropriate blocks to describe the findings of the examination.

Under description, indicate injury and describe further. Avoid use of medical abbreviations and terms so the representatives of the police department and courts may obtain an understanding of the medical and physical conditions which are described.

Answer questions specifically as stated. Do *not* leave unanswered.

IV. Mental Health Evaluation:

Check *all* of terms listed, indicating by "yes" or "no" which describe the mental health status of the patient.

V. Additional Observations or Remarks:

Describe any additional medical findings not already indicated in other sections. Include information with regard to alcoholic odor of breath and torn or bloody appearance of clothes if they are evident.

VI. Medical Evaluation:

Answer question "yes" or "no" or "unable to determine". Do *not* leave unanswered since this is one of the basic factors in determining the extent and type of legal action to be taken.

VII. Testing:

Obtain blood specimen to be sent to laboratory for syphilis testing.

Obtain a vaginal culture to be sent to laboratory for gonorrheal testing. If anal sodomy is suspected, obtain an anal culture.

Obtain a vaginal smear to be sent to laboratory for sperm testing. If anal sodomy is suspected, obtain an anal smear.

Check either "done" or "not done" to indicate testing done. Check "vaginal" and/or "anal" to indicate type or types of tests taken.

If sperm test is also done at time of medical exam, indicate results of test.

VIII. Treatment:

Check either "done" or "not done" to indicate treatment given and what type of treatment. *Adequate vaginal cleansing after medical examination is mandatory.*

IX. Instructions for Follow-up

Check whether oral and/or written (pamphlet) instructions were given.

Signature of Patient

Signature of patient is obtained by representative of Metropolitan Police Department. If patient is a minor, the responsibility for obtaining the signature of parent or guardian is assumed by the representative of Metropolitan Police Department. If parent or guardian cannot be located, the representative of Metropolitan Police Department will authorize the examination and release of report.

Photographs

It is the responsibility of the authorized representative of the Metropolitan Police Department to determine when he has obtained proper authorization for any picture he finds it necessary to make for use as evidence in court.

FORM DSS-2221-A (10/74) (FACE)

REPORT OF SUSPECTED CHILD ABUSE OR MALTREATMENT

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES

ORAL RPT. DATE	STATE REGISTRY NO.	LOCAL REGISTRY NO.
TIME ☐ AM ☐ PM	LOCAL CASE NO.	LOCAL AGENCY

Subjects of Report

List all children in household, adults responsible for household, and alleged perpetrators.

Line No.	Last Name	First Name	M.I.	Aliases	Sex (M, F, Unk.)	Birthdate or Age Mo.	Day	Yr.	Ethnic Code (★Over)	Susp. or Relation. Code (★★Over)	Check (✓) if Alleged Perpetrator
1											
2											
3											
4											
5											
6											
7											

☐ MORE

LIST ADDRESSES AND TELEPHONE NUMBERS:
HOUSEHOLD — TELEPHONE NO.
OTHERS (Give Line Nos.) — TELEPHONE NO.
TELEPHONE NO.

Basis of Suspicions

Alleged consequences or evidence of abuse or maltreatment - Give child(ren)'s line number(s). If all children, write "ALL".

_______ DOA/Fatality
_______ Fractures
_______ Subdural Hematoma, Internal Injuries
_______ Lacerations, Bruises, Welts
_______ Burns, Scalding
_______ Excessive Corporal Punishment
_______ Child's Drug/Alcohol Use
_______ Drug Withdrawal
_______ Lack of Medical Care
_______ Malnutrition, Failure to Thrive
_______ Sexual Abuse
_______ Other, specify: _______
_______ Educational Neglect
_______ Emotional Neglect
_______ Lack of Food, Clothing, Shelter
_______ Lack of Supervision
_______ Abandonment

State reasons for suspicion. Include the nature and extent of each child's injuries, abuse or maltreatment, any evidence of prior injuries, abuse or maltreatment to the child or his siblings and any evidence or suspicions of "Parental" behavior contributing to the problem.

(If known, give time and date of alleged incident):
Mo. | Day | Yr.
Time _______ ☐ (AM) ☐ (PM)

Sources of This Report

PERSON MAKING THIS REPORT		SOURCE OF THIS REPORT IF DIFFERENT	
NAME	TELEPHONE NO.	NAME	TELEPHONE NO.
ADDRESS		ADDRESS	
AGENCY/INSTITUTION		AGENCY/INSTITUTION	

Relationship (✓ for Reporter, X for Source)
☐ Med. Exam./Coroner ☐ Physician ☐ Hospital Staff ☐ Law Enforcement ☐ Neighbor ☐ Relative
☐ Social Services ☐ Public Health ☐ Mental Health ☐ School Staff ☐ Other (specify) _______

For Use By Physicians Only

Medical Diagnosis on Child

Signature of Physician Who Examined/Treated Child
X

Telephone No.

Hospitalization Required: 0 ☐ None 1 ☐ Under One Week 2 ☐ One - Two Weeks 3 ☐ Over Two Weeks

Actions Taken or About To Be Taken:
0 ☐ Medical Exam 2 ☐ X-Ray 4 ☐ Removal/Keeping 6 ☐ Not. Med. Exam./Coroner
1 ☐ Photographs 3 ☐ Hospitalization 5 ☐ Returned Home 7 ☐ Notified D.A.

Signature of Person Making This Report
X

Title

Date Submitted
Mo. | Day | Yr.

FORM DSS-2221-A (10/74) (REVERSE)

9 ETHNICITY CODES	
(Wh)ite	(Bl)ack
(Sp)anish	(Or)iental
(Am)er. Ind.	(Ot)her
(Un)known	

10 SUSPICION AND RELATIONSHIP CODES

CHILDREN (Suspicions)

(AB) Abuse	(MA) Maltreatment	(NO) None	(UN) Unknown

ADULTS (Relationships)

(P) Parents	(PS) Parental Substitute	(FP) Foster Parent	(GP) Grand Parent
(R) Relative	(N) No Relationship	(UN) Unknown	

Abstract Sections from Article 6, Title 6, Social Services Law

Section 412. Definitions.

1. Definition of Child Abuse. (see N.Y. Family Court Act, Section 1012(e)

An "abused child" is a child less than sixteen years of age whose parent or other person legally responsible for his care:

(1) inflicts or allows to be inflicted upon the child serious physical injury, or

(2) creates or allows to be created a substantial risk of physical injury, or

(3) commits or allows to be committed against the child a sexual offense as defined in the penal law.

2. Definition of Child Maltreatment. (see NYC Family Court Act, Section 1012(f)

A "maltreated child" is a child under eighteen years of age who has had serious physical injury inflicted upon him by other than accidental means.

A "maltreated child" is also a child under eighteen years of age whose physical, mental or emotional condition has been impaired or is in danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care:

(1) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(2) in providing the child with proper supervision or guardianship; or

(3) by unreasonable inflicting, or allowing to be inflicted, harm or a substantial risk thereof, including the infliction of excessive corporal punishment; or

(4) by using a drug or drugs; or

(5) by using alcoholic beverages to the extent that he loses self-control of his actions; or

(6) by any other acts of a similarly serious nature requiring the aid of the Family Court.

Section 415. Reporting Procedure. Reports of suspected child abuse or maltreatment shall be made immediately by telephone* and in writing within 48 hours after such oral report ..... written reports shall be made to the appropriate local child protective services on this form (Report of Suspected Child Abuse and Maltreatment, DSS-2221).

Section 419. Immunity from Liability. Any person, official, or institution participating in good faith in the making of a report, the taking of photographs, or the removal or keeping of a child pursuant to this title shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any person required to report cases of child abuse or maltreatment shall be presumed.

Section 420. Penalties for Failure to Report.

1. Any person, official or institution required by this title to report a case of suspected child abuse or maltreatment who willfully fails to do so shall be guilty of a class A misdemeanor.
2. Any person, official or institution required by this title to report a case of suspected child abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure.

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* New York State Child Abuse and Maltreatment Register - 1-800-342-3720

New York City - 431-4650

The American Humane Association, Children's Division

NATIONAL STUDY ON CHILD NEGLECT AND ABUSE REPORTING

P.O. Box 1319, Denver, Colorado 80201

Please use hard ball point pen!

A. Case Number ____________ Date Report/Referral Made ___/___/___ NSCNAR I.D. No. ____________

1. Parent(s)/Substitute(s)

(Last Name)	(First)	(Middle)	(Former)	Role	Age	Sex	Ethnicity
1.)							
2.)							

Child(ren)	Relationship 1.	2.	Role	Age	Sex	Ethnicity
A.)						
B.)						
C.)						
D.)						
E.)						
F.)						

Other (Alleged Perpetrator(s) if different from parent(s)/substitute(s))	Relationship	Role	Age	Sex	Ethnicity
3.)					
4.)					

Ethnicity Code
- A-Asian
- B-Black
- C-Caucasian
- D-Spanish Surname
- E-Native American
- F-Other (specify) ____________

Sex Code
- M-Male
- F-Female

Role Code
- V-Victim
- P-Alleged Perpetrator
- N-Not Involved

Relationship Code
- A-Natural Child
- B-Adopted Child
- C-Stepchild
- D-Foster Child
- E-Grandparent/child
- F-Sibling
- G-Babysitter/Childcare
- H-Other Relative
- I-Parent Out of the Home
- J-Institution Staff
- K-Teacher
- L-Unknown
- M-Other

2. Marital Status of Parent(s)/Substitute(s) *(Circle one letter)*
- A-Legal Marriage
- B-Consensual Union
- C-Never Married
- D-Divorced/Separated
- E-Widow/Widower
- F-Marriage Partner Temporarily Absent
- G-Marriage Partner Permanently Absent
- H-Unknown

3. a) ____
Address of Family City (NSCNAR Code ________) County (NSCNAR Code ________)

b) ____
Address of Alleged Perpetrator (if different) City County

4. ____________ ___/___/___ ____________ ____________
Worker Completing Form Date Form Completed State (NSCNAR Code ________) District/Region (NSCNAR Code ________)

5. Nature of Complaint (specify) ____

6. Source of Initial Report *(Circle one letter)*
- A. Private Physician
- B. Hospital/Clinic Physician
- C. Hospital/Clinic Personnel
- D. Nurse
- E. School Nurse
- F. Teacher
- G. Other School Personnel
- H. Day Care, Headstart, Babysitter, etc.
- I. Public Social Agency
- J. Private Social Agency
- K. Court
- L. Law Enforcement
- M. Coroner/Medical Examiner
- N. Victim
- O. Relative
- P. Sibling
- R. Parent/Substitute
- S. Anonymous
- T. Friend/Neighbor
- U. Other (specify) ____________

7. Agency Receiving Initial Report *(Circle one letter)*
- A. State DSS
- B. County/Local DSS
- C. Private Agency
- D. Court
- E. Law Enforcement Agency
- F. Prosecuting Attorney

8. Determination of Case Status *(Circle applicable letter(s))*

Abuse	Neglect
A. Substantiated	C. Substantiated
B. Unsubstantiated	D. Unsubstantiated

IF UNSUBSTANTIATED, DO NOT COMPLETE REST OF FORM!

9. Involved child(ren) *(Circle applicable letters for each involved child)*

	Type of Abuse/Neglect
A B C D E F (1)	Brain Damage/Skull Fracture
A B C D E F (2)	Subdural Hemorrhage or Hematoma
A B C D E F (3)	Bone Fracture (Other than Skull)
A B C D E F (4)	Dislocation/Sprains/Twisting; Shaking
A B C D E F (5)	Internal Injuries
A B C D E F (6)	Malnutrition
A B C D E F (7)	Failure to Thrive
A B C D E F (8)	Exposure to Elements
A B C D E F (9)	Locking In/Out
A B C D E F (10)	Poisoning (Unintentional)
A B C D E F (11)	Burns, Scalds
A B C D E F (12)	Cuts, Bruises, Welts
A B C D E F (13)	Sexual Abuse (specify) ____________
A B C D E F (14)	Congenital Drug Addiction
A B C D E F (15)	Physical Neglect
A B C D E F (16)	Emotional Neglect
A B C D E F (17)	Medical Neglect
A B C D E F (18)	Educational Neglect
A B C D E F (19)	Abandonment
A B C D E F (20)	Lack of Supervision
A B C D E F (21)	Other (specify) ____________

REMOVE CARBON BEFORE BEGINNING THIS SIDE

10. **Severity of Abuse/Neglect** *[Circle one letter for each involved child]*

A B C D E F (1) No treatment
A B C D E F (2) Moderate
A B C D E F (3) Serious/Hospitalized
A B C D E F (4) Permanent Disability
A B C D E F (5) Fatal

11. **Special Characteristics of Involved Child(ren)** *[Circle all applicable letters]*

A B C D E F (1) Premature Birth
A B C D E F (2) Diagnosed Mentally Retarded
A B C D E F (3) Congenital Physical Handicap
A B C D E F (4) Physically Handicapped
A B C D E F (5) Chronic Illness (e.g., asthma, muscular dystrophy, cerebral palsy, diabetes, epilepsy, etc.)
A B C D E F (6) Emotionally Disturbed
A B C D E F (7) None

12. **Education** *[Circle one letter for each Parent/Substitute]*

Mother/Sub.	Father/Sub.	
A	G	Grades 0-3
B	H	Grades 4-8
C	I	Some High School
D	J	High School Graduate
E	K	Some College/Vocational Training
F	L	College Graduate

13. **Occupation** *[Circle one letter for each Parent/Substitute]*

Mother/Sub.	Father/Sub.	
A	H	Unemployed
B	I	Unskilled Labor
C	J	Skilled Labor
D	K	Business/Professional
E	L	Agriculture
F	M	Technical
G	N	Other (specify) ________________

14. **Estimated Yearly Income** *[Circle one letter]*

A. $0 - $2,999
B. $3,000 - $4,999
C. $5,000 - $6,999
D. $7,000 - $8,999
E. $9,000 - $10,999
F. $11,000 - $12,999
G. $13,000 - $15,999
H. $16,000 - $19,999
I. $20,000 - $24,999
J. $25,000 - $29,999
K. $30,000 - $39,999
L. $40,000+

15. **Source of Income Supplement** *[Circle one letter]*

A. None
B. AFDC
C. Other Public Assistance
D. Retirement/Social Security/Pensions, etc.

16. **Factors Present** *[Circle all applicable letters]*

Family
A. Broken Family
B. Family Discord
C. Insufficient Income/Misuse of Adequate Income
D. New Baby in Home/Pregnancy
E. Heavy Continuous Child Care Responsibility
F. Physical Abuse of Spouse/Fighting
G. Parental History of Abuse as a Child

Environment/Social
H. Recent Relocation
I. Inadequate Housing
J. Social Isolation

Parental Capacity
K. Loss of Control During Discipl
L. Lack of Tolerance to Child's Disobedience and Provocation
M. Incapacity Due to Physical Handicap/Chronic Illness
N. Alcohol Dependence
O. Drug Dependence
P. Mental Retardation
Q. Mental Health Problem
R. Police/Court Record (excluding traffic)
S. Normal Authoritarian Method of Discipline
T. Lack of Parenting Skills

17. **Disposition of Involved Child(ren) at Completion of this Form**
[Circle all applicable letters]

A B C D E F (1) Child At Home
A B C D E F (2) Disposition Pending
A B C D E F (3) Voluntary Placement
A B C D E F (4) Court Ordered Placement
A B C D E F (5) Consent to Adoption
A B C D E F (6) Termination of Parental Rights

18. **Services Provided/Actions Taken** *[Circle all applicable letters]*

A. Casework Counseling
B. Homemaker Services
C. Day Care Services
D. Foster Care
E. Shelter Care
F. Health Services (including mental)
G. Juvenile/Family Court Petition Filed
H. Criminal Action Taken
I. No Action Taken, Awaiting Further Investigation
J. Other Protective Services (specify) ____________________

Comments:

National Standard Form – 0024
Copyright 1977 Children's Division, The American Humane Association, Denver, Colo.

NATIONAL STUDY ON CHILD NEGLECT AND ABUSE REPORTING

Children's Division, The American Humane Association
P.O. Box 1319, Denver, Colorado 80210
In cooperation with the Office of Child Development, DHEW

PROCEDURES AND SPECIAL INSTRUCTIONS

The National Standard Form is to be filled out by the local social worker assigned to the case and should be completed during the investigation and after a case determination has been made.

The form utilizes a combination of carbon and carbonless duplicating paper. Remove carbon by tearing along the bottom of the form. CARBON PAPER MUST BE REMOVED BEFORE FILLING OUT SIDE 2.

The local DSS will keep the yellow copy of the completed form. The remaining three copies are to be forwarded to your state central registry. In those states without central registries, the form should be sent to the office of the state DSS. The state central registry will send the white copy to the NSCNAR at the address printed on the form, will retain the green copy, and the pink copy for state or local use as required.

Any questions regarding the form are to be forwarded to your state central registry, for referral to the National Study on Child Neglect and Abuse Reporting.

Please complete this form with a hard ball point pen. USE SUFFICIENT PRESSURE TO INSURE LEGIBILITY ON ALL FOUR COPIES. Circle the appropriate letter for each item.

IDENTIFICATION MATERIAL

In accordance with HEW guidelines, the name and address portion of the form is blocked out on the white copy to be forwarded to the NSCNAR. The NSCNAR is not intended to serve as a registry of families or a tracking system, therefore the identifying information is not written into the NSCNAR copy. The city name must be directly above or to the right of the word "city" on the form. Otherwise it will not appear on the white copy.

INITIAL REPORT

A. Case Number: Enter the case number assigned to the case by your agency. In those states where individual numbers are assigned to each (involved) child, enter the number of the child occupying line A in this space. If other identification is needed, use Comments section.

Date Report Made: This is the date that the initial report was made. If this information is not available to you, use the date you received the referral.

NSCNAR I.D. No.: Do not fill in this item. For NSCNAR use only.

1. **PARENT/SUBSTITUTES 1 & 2**: Enter the names of the legal guardian(s) and/or those persons who have been in a guardianship capacity to the child; and/or with whom the child(ren) has been residing. Include maiden, or former married names for mother under (Former) Names are entered on lines 1 and 2. If there is only one parent/substitute, enter the name on line 1. There must be a perpetrator shown in either lines 1, 2, 3, or 4. If the perpetrator does not reside in the household, he/she is entered in lines 3 or 4. Perpetrators who are parent/substitutes and residing in the household are shown in lines 1 and 2. This form is not designed for reporting large groups of children in institutions.

Role: There must be a perpetrator and a victim on every form. Each person listed must be shown as V, N, or P.

Age: Enter the age in years for all persons listed in Item 1. If your state must use date of birth, enter next to the name.

Sex: Enter the appropriate letter code for the sex of each person in Item 1. M-Male, F-Female.

Ethnicity: Enter the appropriate letter code for each person listed in Item 1. Enter only one code per person. Use special codes when they are assigned to a particular state. Native American refers to American Indian.

Children A-F: Item 1 relates to those children involved in the alleged abuse/neglect and to any other children residing in the household. If there are more than six children in the family unit, fill out a separate form and staple to the first. On the form with additional involved children, fill out the case number and Items 1, 9, 10, 11, and 17. Fill out only Item 1 for non-involved children. Please list all victims first, then non-involved children.

Age: Write number for months followed by a large letter "M" if less than one year. If age is more than one year, do not list in months or fractions.

Relationship (1 & 2):

Children A-F: Enter the proper letter code for each child designating the relationship of the child to each parent/substitute, designated by 1 and 2 on the lines for parent(s)/substitute(s) and corresponding to the 1 and 2 in the child(ren) section under the relationship column. These are codes A-F, H, L, and M in the relationship code.

Each entry in line 1 and 2 must be matched to an entry in columns 1 and 2. The relationship to BOTH parents must be shown.

Other (Alleged Perpetrator(s) if different from parent/substitute): In the category "Other (Alleged Perpetrator(s) if Different from Above)" the relationship refers to the relationship of the person listed to the child(ren). These are letters E through M. If more than one relationship exists between "Other Perpetrator" and the victims, indicate relationship for abuse victim 'A' only.

2. **MARITAL STATUS**: Indicate Marital status with circle for appropriate status.

3-4. **CITY, COUNTY, STATE, DISTRICT/REGION**: This data pertains to the location where the alleged abuse/neglect is being investigated. "District/Region" applies only to those states that utilize such administrative units. If alleged abuse/neglect occurs on an Indian or military reservation, enter reservation name in space marked "District/Region." NSCNAR will fill in codes below the line. Enter the city name above and to the right of the printed word "city." County must be included.

5. **NATURE OF COMPLAINT**: Make a brief explanation of the initial report.
6. **SOURCE OF INITIAL REPORT**: Circle only one letter indicating who made the first report to the receiving agency.
7. **AGENCY RECEIVING INITIAL REPORT**: Circle the appropriate letter for the agency receiving the first report.
8. **DETERMINATION OF CASE STATUS**:

Substantiated: 1) An admission of the fact of abuse or neglect by persons responsible; 2) an adjudication of abuse or neglect; or 3) any other form of confirmation deemed valid by DSS.

Unsubstantiated: No justification for suspicion of abuse/neglect; no further action planned. If doubtful, hold the report for the period of time permitted by state law or until determination can be made.

9. TYPE OF ABUSE/NEGLECT:

There must be a type of abuse or neglect entered for each victim shown in Letters A-F above.

Subdural Hemorrhage or Hematoma: Blood clot or bleeding under the outer covering of the brain.

Failure to Thrive: Condition in which infants or children are under development standards (i.e., height, weight), due to social, medical or psychological factors.

Locking In/Out: Locking out of child's residence or locking in confinement to the detriment of the child physically and/or emotionally.

Emotional Neglect: Lack of emotional support necessary for the development of a sound personality, causing observable behavior problems in the child.

Abandonment: Leaving a child unattended, or in someone else's care, with no intent to return.

Lack of Supervision: Inadequate supervision on child's activities or leaving unattended children who are too young for self-care, or in a potentially hazardous situation.

Sexual Abuse: Specify incest, rape, molestation, unnatural acts.

Other: Intentional poisoning or administration of drugs or alcohol. Write in nature of act after "specify," and use "Comments" if needed for clarity.

10. SEVERITY OF ABUSE/NEGLECT:

No treatment: No medical treatment required.

Moderate: Medical attention required. If "battered child syndrome" has been medically determined, note in Comments. In both instances, whether or not treatment was sought is not relevant, but rather that it was needed.

11. SPECIAL CHARACTERISTICS OF INVOLVED CHILD(REN):

Diagnosed Mentally Retarded: A professional diagnosis of the condition or an obvious physical manifestation, i.e., a mongoloid child.

Emotionally Disturbed: A professional diagnosis of the condition or obvious physical signs, i.e., erratic or irrational behavior.

12. EDUCATION: Show an educational level for each parent/substitute listed in lines 1 or 2. Estimate educational level if not given by client. Do not show education for a parent/substitute not living in the household.

13. OCCUPATION OF PARENT/SUBSTITUTE:

Show an occupation level for each parent/substitute in lines 1 or 2. Do not show an occupation for a parent/substitute not living in the household.

Unemployed: All persons not presently in the work force (i.e., student, housewife, or temporarily unemployed).

Unskilled Labor: Requiring little or no formal training or acquisition of specific skills (i.e., janitor, waitress, factory workers, etc.).

Skilled Labor: Requiring formal training or the acquisition of skills (i.e., plumber, butcher, mechanic, cosmetologist).

Business/Professional: High level of skill required in dealing with people (i.e., medical, legal, educational, administrative, self-employed).

Agriculture: Farmer, rancher, forest ranger, migrant worker.

Technical: High level of skill in dealing with the industrial or business sciences (i.e., engineer, accountant, computer services).

Other: If military, enter service and rank.

14. ESTIMATED YEARLY INCOME: The gross earned income and any supplemental income that the household receives. Estimate amount if not provided; consider all income from all sources.

15. SOURCE OF INCOME SUPPLEMENT: If more than one supplement is being received, indicate that which is the greatest.

16. FACTORS PRESENT: Circle all applicable factors.

17. DISPOSITION: There must be a disposition entered for each victim shown in Letters A-F above, unless the victim has died.

18. SERVICES PROVIDED: Show in "J-Other Protective Services" if case is referred to, or investigated in cooperation with a private social agency, or if services not already listed are given, then specify.

COMMENTS: Information deemed necessary by the caseworker, or required by the state which is not included in this form, may be added in the Comments section for inclusion into the case record. These may be numbered 19, 20, etc., if desired for local records purposes.

THE VICTIM:

I) Birth Status
  a) legitimate
  b) illegitimate
  c) unknown

II) Ordinal Position in Family
  a) first
  b) second
  c) third
  d) fourth
  e) fifth
  f) sixth +
  g) unknown

III) Age by Sex - Male/Female
  a) 0-3 years
  b) 3-5 years
  c) 5-7 years
  d) 7-9 years
  e) 9-11 years
  f) 11-13 years
  g) 13-15 years
  h) 15-18 years
  i) unknown

IV) Race by Sex - Male/Female
  a) Asian
  b) Black
  c) Caucasian
  d) Spanish
  e) Native American
  f) Other
  g) unknown

V) Special Characteristics
  a) premature birth
  b) diagnosed mentally retarded
  c) congenital physical handicap
  d) physically handicapped
  e) Chronic illness
  f) emotionally disturbed
  g) none
  h) unknown

VI) Type of Sexual Abuse
  a) incest
  b) intercourse
  c) sodomy
  d) homosexual behavior/assault
  e) sexual assault
  f) indecent liberties
  g) other
  h) unknown

VII) Severity of Abuse
  a) no treatment
  b) moderate
  c) hospitalization - serious
  d) permanent disability
  e) fatal
  f) unknown

VIII) Previous Abuse Report(s) on Child
  a) yes
  b) no
  c) unknown

IX) Disposition of Case
  a) child at home
  b) disposition pending
  c) voluntary placement
  d) court-ordered placement
  e) consent to adoption
  f) termination of parental rights
  g) death
  h) other
  i) unknown

X) Services provided/ Actions taken
  a) case work counseling
  b) homemaker services
  c) day care services
  d) foster care
  e) shelter care
  f) health services (including mental)
  g) juvenile/family court petition filed
  h) criminal action taken
  i) no action taken- awaiting furthur investigation
  j) other protection service
  k) unknown

THE PERPETRATOR:

I) Age by Sex - Male/Female
  a) 0-21 years
  b) 22-25 years
  c) 26-30 years
  d) 31-40 years
  e) 41 + years
  f) unknown

II) Race by Sex - Male/Female
  a) Asian
  b) Black
  c) Caucasian
  d) Spanish
  e) Native American
  f) Other
  g) unknown

III) Marital Status of Perpetrator
  a) legal marriage
  b) consensual union
  c) never married
  d) divorced/separated
  e) widow/widower
  f) marriage partner temporarily absent
  g) marriage partner permanently absent
  h) unknown

IV) Perpetrator's Relationship to Child
  a) natural parent
  b) adoptive parent
  c) stepparent
  d) foster parent
  e) grandparent
  f) sibling
  g) baby sitter/child care person
  h) other relative
  i) institution staff
  j) teacher
  k) other
  l) unknown

THE FAMILY:

I) Size of Family - Adults/Children
  a) one
  b) two
  c) three
  d) four
  e) five
  f) six
  g) seven +
  h) unknown

II) Number of Parents
  a) one
  b) two (natural)
  c) two (one stepparent)
  d) two (adoptive)
  e) two (foster)
  f) unknown

III) Marital Status of Parents
  a) legal marriage
  b) consensual union
  c) never married
  d) divorced/separated
  e) widow/widower
  f) marriage partner temporarily absent
  g) marriage partner permanently absent
  h) unknown

IV) Family Factors
  a) broken family
  b) family discord
  c) insufficient income/misuse of adequate income
  d) new baby in home/ pregnancy
  e) heavy continuous child care responsibility
  f) physical abuse of spouse/fighting
  g) parental history of abuse as a child
  h) none
  i) unknown

V) Environment/Social Factors
  a) recent relocation
  b) inadequate housing
  c) social isolation
  d) none
  e) unknown

VI) Parental Capacity
  a) loss of control during discipline
  b) lack of tolerance to child's disobedience and provocation
  c) incapacity due to physical handicap/chronic illness
  d) alcohol dependence
  e) drug dependence
  f) occasional use of marijuana
  g) mental retardation
  h) mental health problem
  i) police/court record (excluding traffic)
  j) normal authoritarian method of discipline
  k) no factors listed
  l) unknown

VII) Education by Parent - Mother/Father
- a) 0-3 years grade school
- b) 4-8 years grade school
- c) some high school
- d) high school graduate
- e) some college/vocational training
- f) college graduate
- g) unknown

VIII) Occupation by Parent - Mother/Father
- a) unemployed
- b) unskilled labor
- c) skilled labor
- d) business/professional
- e) agriculture
- f) technical
- g) other
- h) unknown

IX) Estimated Yearly Income
- a) $0 - 2,999
- b) $3 - 6,999
- c) $7 - 10,999
- d) $11 - 15,999
- e) $16 - 19,999
- f) $20 - 29,999
- g) $30,000 +
- h) unknown

X) Source of Income Supplement
- a) none
- b) AFDC
- c) other public assistance
- d) retirement/social security/pensions, etc.
- e) unknown

XI) Source of Initial Report of Abuse
- a) private physician
- b) hospital/clinic physician
- c) hospital/clinic personnel
- d) nurse
- e) school nurse
- f) teacher
- g) other school personnel
- h) day care/headstart/baby-sitter, etc.
- i) public social agency
- j) private social agency
- k) court
- l) law enforcement
- m) coroner/medical examiner
- n) victim
- o) relative
- p) sibling
- q) parent/substitute
- r) anonymous
- s) friend/neighbor
- t) other

American Humane Association, Children's Division, Denver, Colorado 80201

Child victims of incest: A sub-study based on data produced in the research Project, "Protecting the child victim of sex crimes committed by adults."
Reported by Yvonne M. Tormes Denver, 1968

Termination of Parental Rights - Balancing the Equities
By Vincent DeFrancis 1971

Child Abuse Legislation in the 70's
By Vincent DeFrancis and Carroll L. Lucht 1974

Child Victims of Incest
By Yvonne M. Tormes

Protecting the Child Victim of Sex Crimes committed by Adults
By Vincent DeFrancis

A National Symposium of Child Abuse

Fifth National Symposium on Child Abuse October 15-16, 1974

Also:

A Study of Father-Daughter Incest in the Harris County Child Welfare Unit
By John Betzscheider, Joanne Young, Phil Morris, Dorothy Keyes
Printed in the Criminal Justice Monograph, Volume 4, Number 4 1973
for the:
Institute of Contemporary Corrections and the Behavioral Sciences
Sam Houston State University
Huntsville, Texas 77340

Weeping in the Playtime of Others: America's Incarcerated Children
By Kenneth Wooden
Published by McGraw Hill Book Company
New York, New York 1976

Beyond The Best Interests of the Child
By Goldstein, Freud, Solnit
Published by The Free Press (MacMillan)
New York, New York 1973

The Throwaway Children
By Lisa Aversa Richette

The maltreated child: the maltreatment syndrome in children, Second edition
By Vincent J. Fontana
Published by Charles C. Thomas 1971

The theory and practice of incest
By H.H. Traver (a dissertation)
Published by Ann Arbor, Michigan
University Microfilms, 1973

Areen, Judith. "Intervention Bewtween Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases," *Georgetown Law Journal*, Volume 63 (March 1975)

Brant, Renee S.T.; Tisza, Veronica B. "The sexually misused child." *American Journal of Orthopsychiatry* (Albany, N.Y.), 47(1): 80-90, 1977.

Browne,Elizabeth and Penny, Lee. *The Non-Delinquent Child in Juvenile Court: A Digest of Case Law.* Reno: National Council of Juvenile Court Judges, 1974.

Cavallin, Hector. "Incestuous fathers: a clinical report." *American Journal of Psychiatry*, 122(10): 1132-1138, 1966.

Cormier, B.; Kennedy, M.; and Sangowicz, J. "Psychodynamics of Father-Daughter Incest," *Canadian Psychiatric Association Journal*, Volume 7 (October 1962)

Densen-Gerber, Judianne and Jean Benward. *Incest as Causative Factor in Anti-Social Behavior: An Exploratory Study.* Odyssey Institute, Inc. New York, New York, 1976.

Foster, Henry and Freed, Doris. "A Bill of Rights for Children," *Family Law Quarterly*, Volume 6 (winter 1972)

Gebhard, Paul H., and others. *Sex offenders: an analysis of types.* New York, Harper, 1965.

Giaretto, Henry. "The treatment of father-daughter incest: a psycho-social approach." *Children Today* (Washinton, D.C.), 5(4):2-5, 34, 1976.

Institute for Judiacial Administration/American Bar Association, Juvenile Justice Standards Project. *Standards Relating to Coercive State Intervention on Behalf of Endangered (Neglected and Abused) Children and Voluntary Placements of Children.* New York: Institute for Judicial Administration (tentative draft 1976)

Katz, Sanford; Howe, Ruth-Arlene and McGrath, Melba. "Child Neglect Laws in America," *Family Law Quarterly*, Volume 9 (Spring, 1975)

Kennedy, Miriam and Cormier, Bruno M. Father-daughter incest: treatment of a family." In: American Society of Criminology. *Interdisciplinary problems in criminology: papers of the American Society of Criminology, 1964,* edited by Walter C. Reckless and Charles L. Newman. Louisville, Kentucky, 1965.

Lefstein, Stapleton and Teitelbaum, "In Search of Juvenile Justice: *Gault* and Its Implementation," Law and Society Review, Volume 3 (1968-69)

Riemer, Svend. "A Research Note on Incest," *American Journal of Sociology*, Volume 45 (January 1940)

Shelton, William R. "A study of incest." *International Journal of Offender Therapy and Comparative Criminology* (London), 19(2):139-153, 1975.

Virkkunen, M. "Incest offences and alcoholics." *Medicine, Science and the Law* (Brostol, England), 14(2): 124-128, 1974.

Wald, Michael. "State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards," *Stanford Law Review*, Volume 27 (April 1975)

Wald, Michael. "State Intervention on Behalf of 'Neglected' Children: Standards for Removal of Children from their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights," Stanford Law Review, Volume 28 (April 1976)

Weinberg, Samuel. Incest Behavior. New York: Citadel Press, 1955.

Williams, J. E. Hall. "The neglect of incest: a criminologist's view." Medicine, Science and the Law (Bristol, England), 14(1):54-67, 1974.

Yorukuglu, Atalay and Kemph, John. "Children Not Severely Damaged by Incest With A Parent," Journal of the American Academy of Child Psychiatry, Volume 5 (Jan 1966)

1 MS MAGAZINE - APRIL 1977

"I TRIED TO FANTASIZE THAT ALL FATHERS HAD INTERCOURSE WITH THEIR DAUGHTERS"—THE STORY OF MARY C.

BY JAN STUCKER

For years, Mary C. remembered no details of her childhood—her grammar school, her playmates, or even the three-bedroom home in a Phoenix suburb where she lived with her parents, sister, and two brothers.

For a long time, Mary could remember nothing but her father's sexual assaults, which she says began when she was eight or nine.

"I remember him standing next to my bed at night," she says of her tall, husky father. "I would wake up screaming, and he would tell me I had a nightmare and that's why he was in the room. And then after a while, he'd be touching me, touching my breasts and my genitals. I would scream and wake up my mother. My dad would tell her that i must have had a nightmare."

The scene would be repeated three or four times a week, when her father returned home from work at three o'clock in the morning. Mary's mother, who was usually sleeping off an alcoholic binge, never intervened.

"My dad said that if I told my mother he would kill me," Mary remembers, and she had no reason to doubt his word. A volatile, tyrannical man feared by his family, he often beat his wife in front of the children.

Sometime after Mary's twelfth birthday, her father, wearing a condom, forced her to have sexual intercourse with him. "It hurt. I remember crying; I didn't understand what he was doing.

"One day soon afterward I brought home a really good report card and I wanted my dad to be proud of it. Nobody else was home. He asked me to sit on his lap and share it with him. When I did, he tossed my report card on the floor and started being sexual."

To cope with her shock and horror, Mary says she unsuccessfully tried to fantasize that all fathers had intercourse with their daughters. It didn't seem possible to resist her father. "I can remember hitting him a few times, but most of the time I would just feel powerless and cry. I'd just lie there and hope it would hurry and be over. I learned to separate myself from what was going on. This little girl whose father was being sexual with her wasn't really me. At night when he came in, I would crawl really close to the wall. I actually believed that if I got close enough to the wall, he wouldn't be able to touch me. But he always got me.

"I never loved my dad," she remembers today. "I was always scared of him. He would beat my mother up a lot, because she drank too much and took pills, and he would spank us kids a lot, too. But my father looked like a typical, normal father to everyone else."

Mary's mother, who tried suicide several times, had been sexually abused as a child by her stepfather and was intensely afraid of her husband. She eventually withdrew from him sexually. The mother insists that she was unaware of the incest, and so did not intervene to protect her daughter.

Mary was afraid to complain to her mother and she never considered going to the police. "I didn't even know it was a criminal act until I went into [psychiatric] treatment at nineteen," she says today. "You just never heard about incest. And my dad and I never talked about what was going on. It was just something he did and left. I would cry a lot after he left. Then I'd put the pillow over my head and just wish it all away."

As a teenager, Mary began drinking heavily, running away from home periodically, and experimenting with drugs in desperate attempts to block out what was happening.

"Everyone thought I was the crazy one because of the way I was acting. I had no close friends in school. If I had gotten close to people, the incest would have come out. I wouldn't stand up in front of a classroom and give a speech. I was so afraid everyone would see something terrible in me. I refused to go to gym if I had to undress in front of people in the girls' locker room. I always felt dirty, my body felt dirty to me."

Finally, when she was in high school, she confided her awful secret to a girlfriend's mother, who in turn informed Mary's mother. A family meeting ensued. Once Mary made her accusation, her sister said that the father had sexually fondled her as a child, but never had intercourse with her. The father calmly denied it all, but the mother believed her daughters. She got a divorce and received custody of her children.

A year after her parents' divorce, Mary left home and became pregnant. "I really wanted a kid," she says. "I thought if we had each other, that's all I needed."

At a home for unwed mothers, Mary had a miscarriage. Afterward, she became more heavily immersed in the drug scene. She used LSD, barbiturates, speed, mescaline, anything. As Mary was now labeled a problem child, her mother agreed to make her a ward of the court. She was consigned to a series of foster homes until the county welfare department ordered her to return to the home of her father, who had recently remarried. The welfare workers were aware of the history of incest and Mary's fear of her father, but these problems seemed no worse than the family pattern of drinking, attempted suicide, and drug use.

After Mary moved in, the incestuous assaults began again, and two weeks later she fled her father's home. At the age of 18, she married a 20-year-old garage mechanic whom she barely knew—a heavy drinker who was often abusive. After four months, she left him and became a prostitute to support her drug habit. Months of living on the streets took their toll. Becoming increasingly depressed and suicidal, she voluntarily committed herself to a private mental hospital several times for short periods of treatment, and finally sought help at a live-in drug treatment facility. After she licked her drug habit, she underwent more than two years of intensive psychotherapy.

But most of her therapists did not know how to deal with the particular anguish and guilt associated with an incest experience. She finally found one therapist at the family treatment center who helped her understand that her father's attacks had destroyed her ability to relate to any man except as a sexual victim.

"I used to think my father was totally crazy. Through therapy I am able to see him as sick," Mary says now. "I've had to face the fact that the father I fantasized about isn't going to be there. He never was."

Today, Mary is working toward a degree in psychology. Recently hired by the same family therapy institute where she received her treatment, she is working with sex offenders and incest victims. She believes that the first step in helping incest victims is to focus public attention on the crime and put an end to the hush-hush atmosphere that surrounds it. "Incest victims are afraid to ask for help from anyone because of the shame," she explains. "They feel somehow that it's their problem, instead of a problem of the entire family, and that's largely why they guard their secret. I think the public is so scared of incest that the victim has to find alternative ways of dealing with it, as I did. People didn't want to listen to me, and I couldn't get help until somebody did."

Dr. Lorna Anderson, a clinical psychologist who recently completed a study on incest families, has become convinced that incest victims receive "the most prejudiced and inhumane treatment of any women today. They are treated the way rape victims were treated ten years ago: 'she asked for it' and 'she likes it.' "

Mary never asked for it as a nine-year-old or anytime thereafter. But she says those years of sexual torment helped plunge her into drug addiction, prostitution, and mental instability.

In Mary's view, society has labeled the incest victim as seductive and sexually deviant. Thus, the victim becomes the offender. She is the one who often loses her home and the support of her mother and becomes a ward of the state while the father goes free.

The pain of her childhood will always remain, she says, but she has learned to find a positive outcome from the experience.

When she has earned a doctorate in psychology, Mary plans to continue counseling victims and to train other professionals in the treatment of incest problems. She would like to see the establishment of nationwide crisis centers staffed by volunteers who can comfort and help victims and reduce their sense of isolation.

……

Jan Collins Stucker is Special Assignments Writer for the Columbia (S.C.) "Record."

No one wakes up thinking, "Today I'm going to abuse my child."

Abuse is not something we think about, it's something we do. It runs against our nature, yet it comes naturally. It's a major epidemic and a contagious one. Abused children often become abusive parents. Abuse perpetuates abuse.

Child abuse is a major cause of death for children under two. Last year in America, an estimated one million children suffered physical, sexual or emotional abuse and neglect (many cases go unreported). At least 2,000 died needless, painful deaths. And if you think child abuse is confined to any particular race, religion, income group or social stratum, you're wrong. It's everybody's problem.

What's being done about prevention? Not enough. Preventive facilities are simply inadequate. Most social agencies deal with abusers and their victims after the damage has been done.

Child abuse doesn't have to happen. Eighty percent of all abusers could be helped, with your help. Your community needs your aid in forming crisis centers, self-help programs for abusers, and other grass roots organizations. Please. Please write for more information on child abuse and how you can help.

What will you do today that's more important?

A Public Service of This Magazine
& The Advertising Council

We need your help. Write:

National Committee for Prevention of Child Abuse, Box 2866, Chicago, Illinois 60690

CHILD ABUSE CAMPAIGN
MAGAZINE AD NO. CA-2668-73 — 7" x 10" [110 Screen]
B-88
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NCCD VIEWPOINT

CHILD PORNOGRAPHY AND THE CONSTITUTION

In recent months Congress has responded to the widespread media attention and public outcry directed toward a hitherto virtually unknown facet of the pornography industry. The alarm which child pornography, or "kiddie porn" as it has been dubbed by the press, has generated among American citizens is evident by the two bills currently pending in subcommittee. The two pieces of legislation are S 1585, introduced by Senators Culver and Mathias; and H.R. 3913, introduced by Representatives Murphy and Kildee. Both bills would add a new chapter to title 18 U.S. Code, making it a crime for an individual to use children in the production of pornography, and prohibiting the transportation or mailing of such pornography in interstate or foreign commerce. In addition, the Mathias-Culver bill prohibits the interstate and foreign transportation of male minors for the purpose of prostitution.

While the National Council on Crime and Delinquency appreciates these legislative efforts to circumvent the sexual exploitation of children, it feels that there must exist a precise definition between the production of and the distribution of pornographic material. It is permissible and appropriate to proscribe the conduct of individuals who are directly involved in the production of child pornography. This includes those who participate in sexual acts with minors, who photograph the illegal acts, and who engage the child to so perform. Individuals who are involved solely in the distribution of such material however, are clearly protected under the First Amendment, which prohibits restraints on free speech even if that speech is offensive or of no value.

The Murphy-Kildee bill fails to make this distinction between production and distribution, and thereby fails in its responsibility to safeguard the constitutional guarantees of American citizens. Section 2252 of the bill makes it unlawful to distribute or receive pornographic materials, with penalties of up to $25,000 fine or fifteen years imprisonment. Although we may consider the activities of those individuals who disseminate such material reprehensible, we cannot prohibit the exercise of the fundamental right to free speech which all Americans enjoy and which is protected under law.

This dichotomous situation of combatting the "kiddie porn" industry and complying with inalienable constitutional safeguards is resolved in the Mathias-Culver bill. Unlike H.R. 3915, the proposed legislation prohibits only the use of children in the production of pornography, not the auxiliary distribution of pornographic material. In this manner, the bill meets the necessary constitutional requirements and at the same time seeks to eradicate child pornography in its initial stages of development.

NCCD unreservedly joins with the many other private agencies in condemning this pernicious activity and in urging Congress to promulgate stringent legislation to this end. Yet we must be careful not to allow our zealousness to obfuscate our need to preserve the liberties that are protected by the Constitution. The problems raised by this issue are difficult but not insurmountable. We believe the S 1585 bill to be more enforceable and constitutionally sound piece of legislation and fully support its passage into law.

APPENDIX C

C—REPORTS ON PORNOGRAPHY

C-1—"The Rockford Papers," April, 1977.
C-2—"They Have No Voice," Marjorie Margolies.
C-3—"Obscenity—Forget It," Charles Rembar.
C-4—"Child Porn,' State Government News.

ROCKFORD COLLEGE INSTITUTE,
Rockford, Ill., May 26, 1977.

Representative JOHN CONYERS, Jr.,
Rayburn House Office Building, Washington, D.C.

DEAR MR. CONYERS: Enclosed is the current issue of *The Rockford Papers*. It contains interpretations of the obscenity issue.

I believe the pamphlet's theme is relevant to your recent committee hearings on the obscenity problem.

I hope that our publication will be of interest and use to you.

Yours truly,

RICHARD A. VAUGHAN,
Research Associate.

Enclosure.

THE ROCKFORD PAPERS

Vol. 2, No. 3 April, 1977

Introduction: The Recent Development in Morals, Art and Taste
The Cultural Beacons of Our Days: Richard A. Vaughan
On Pornography: James D. Armstrong
Sexual Conduct and Social Decomposition: John A. Howard
The Glandular Stench in America: Leopold Tyrmand
Chronicles of Dehumanization

INTRODUCTION: THE RECENT DEVELOPMENT IN MORALS, ART AND TASTE

Never, in mankind's history, have stupidity and abomination been more generously rewarded with fame and money than they are in our time. People who refuse to reflect on the social consequences of their views and their propensities gather wealth and recognition by uttering ponderous platitudes about the world and life. Over the last decade, the volume of clichés has reached the level at which civilization is disrupted and the sense of life is damaged.

The changes in attitudes that have occurred in our lifetime can be measured by the disintegration of norms. However, it is the perversion of norms that threatens the survival of humanness in America. This is not easy to perceive when outrageous facts and opinions become so commonplace that we seldom realize the corruption of our own consciousness.

Let's examine three and imagine what they mean.

. . . . Gerald Ford, who is seen by many as the symbol of Mid-American decorum, refused during his presidency to socialize with Mr. Solzhenitsyn — a man whose passion is justice and whose life is a model of Christian love. But he invited to his White House and hosted at his table Mr. Andy Warhol, who is a prominent advocate of decadence. A producer of motion pictures which openly defile any communion between woman and man, and promote sexual aberrations, transvestitism, etc., Mr. Warhol reduces people to the condition of instinctually motivated amoebas, which seek salvation in the narcotic stupor. His message is literal filth and stench proclaimed as human bliss.

During his tenure, Mr. Ford proclaimed his faith in the family — the foundation of the Judeo-Christian civilization. To Mr. Warhol, family, both as concept and practice, is an incarnation of evil. So why did Mr. Ford ask Mr. Warhol to a president's dinner and endow

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him with the honor of using the White House china and silver? Because a subservience to the almighty Liberal Culture establishment, of which Mr. Warhol is an outstanding member, has become the fate of most of those who would seek or hold high office. Not long ago, Mr. Ford's son joined the staff of the Rolling Stone *magazine which pollutes minds with an ideal of the human being as throbbing matter. Money and power are nowadays on the Cultural Left, and it seems as if American presidents have surrendered to this lure. They do not balk at abandoning all moral principle in their rush to jump on the modish bandwagon. The consequences are immense and hideous.*

. . . . The Justice Brandeis Award for the Publisher of the Year, which is sponsored by the National Publishing Industry and Brandeis University, was granted Anno Domini 1975 to a Bob Guccione, publisher of Penthouse *magazine. Mr. Guccione is a smut peddler. He made millions debasing nudity, especially feminine nudity and turning it into mucous membrane. Incidentally, Mr. Guccione contributed $150,000 to the Brandeis University Scholarship and Fellowship Program.*

. . . . It was rumored that in filming a certain pornographic SM movie the female was murdered to augment the sexual frenzy on the screen. Members of the New York cultural elite raced to rent the movie for private showings. If the rumor is correct, it is of paramount significance, for it marks the end of the Western concept of theater where life is imitated not enacted. It also does away with those rudiments of Christianity which reject manslaughter as entertainment. Even if the rumor was false, the reaction to it is pure barbarity. The Liberal Culture, to paraphrase Leo Strauss, ". . . fiddles while Rome burns. . ." However, ". . . it does not know that it fiddles, and it does not know that Rome burns."

THE CULTURAL BEACONS OF OUR DAYS

At a time when the public outcry against violent crime has never been louder, Ladies' Home Journal has taken its own bold step. Promoting its March issue with a full-page ad in the New York Times, the Journal makes a plea for a citizen campaign against violent crime and the "spiritual death" that it "is forcing on us all."

The ad reads:

> "With a murder, robbery, assault or rape in the U.S. every 31 seconds, the shocking thing is that we have almost lost our capacity to be shocked by this. Our TV and movie screens make violence fashionable; public disrespect for law enforcement agencies is growing. What can we do to save our society, our children, ourselves?"

Has the Ladies' Home Journal never contributed to this abysmal desensitization?

Less than a year ago, Ladies' Home Journal listed Charles Manson and Linda Lovelace among the "top 50" heroes of American youth. Acknowledging a mass murderer and a porno queen as exemplars for American youngsters did not send the Journal into a full-page rage. It told us: "In the past, the idealized view of heroes often obscured reality." And added: "Today's heroes reflect only the life-sized values of those who admire them." Then concluded: "Perhaps America's coming generation is saying that it no longer believes in the heroic. . . Their heroes, like them, are flawed. . ."

Plutarch, a historian and promoter of heroism, sought to write of his subjects, "all that is noble and worthiest to know . . ." Today's guiding principle is apparently just the opposite, rationalizing the selection of human scum as heroes.

The media's fascination with individual blemishes, flaws and personal deviations makes it difficult for heroes to embody the irreproachable reverence that their deeds alone earn them. A twelve-year-old polled in the survey poignantly said: "Who can have heroes? They're just like us." The Journal chose to brand him a "cynic." Is he not a foreteller of a fundamental loss in the hearts of the young? Is this any less an example of "spiritual death" than the more obvious crimes?

* * *

With its own sense of what links fashionability with social tragedies, Time reported on the latest vogue of the graphic depiction of women being physically abused. The already exhausted themes of "nudity, sexual fondling and lesbianism" are being replaced by misogyny, sexual violence, physical assault, bondage, gang-rape, sado-masochism and murder.

Chris von Wangenheim, a New York City fashion photographer, told Time:

> "The violence is in the culture so why shouldn't it be in our pictures?"

Time obviously thought that profound statement worthy of public attention. "Why not?" seems to be the New York Liberal Culture's moral commandment. If we told Time and von Wangenheim that more than thirty thousand children are sexually abused each year in Illinois, would "Why not?" be their reaction? Time is always ready to make a Pontius Pilate gesture: "We inform, but we don't pass judgments." It knows well that by rewarding Mr. von Wangenheim with an "objective," valueless report on his sense of what is culture, it promotes his moral atrophy as fashion. But promoters do not care; they laugh in the face of the reports of law enforcement officials that almost all sexual offenders are devotees of obscene material.

With sado-masochism and sexual violence IN and feeling, commitment, consideration and love OUT, we would rather agree with another observer, a certain Mr. Andrew, who expressed himself of late on the subject of pornographic press:

> "Not everyone who reads it is a sex deviate, but every sex deviate reads it."

However, Mr. Andrew is not a fashion photographer but a staff sergeant of the City of Edmonton Police Force. He thus stands little chance that Time will ask his opinions about culture and philosophy.

* * *

The indefatigable Time never stops propagandizing the sexual gismos of our time, apparently assuming that the readership yearns for it and that reporting on eccentric foolishness is socially harmless. So goes the story of a Manhattan theatre group, called the Project, that has taken upon itself to promote catharsis by acting out sexual fantasies and encouraging its audience to shed any privacy of desires. The founder of the group, a Ms. Lowndes explains the Project's purpose:

> "We want people to feel free. Most people's fantasies are very beautiful and very creative . . We have to weigh the millions of people suffering from harmless fantasies against the possibility of encouraging a kook like Charles Manson. If I found that we produced one violent person with our show, I think that we would fold up our tent."

Ms. Lowndes obviously bases her mission on strange logic: sexual fantasies are beautiful and creative, but millions of people suffer from them. How she is going to know what uninhibited openness does to her audience remains a puzzle. She has a premonition of catering to future Mansons, but this does not deter her from catering to what she seems to ignore about sexual fantasies. We can help her. The National On Campus Report describes a new fad which seems to be the ultimate in enacting sexual fantasies:

> "The practice is popularly termed 'terminal sex' and involves a man hanging himself by the neck with a noose in an attempt to enhance sexual self-gratification. He is supposed to release the noose at the last minute, just before unconsciousness. A slight miscalculation in timing means death."

Research conducted by the Michigan State University College of Human Medicine has shown that 200-300 deaths of this type have occurred annually. Most are between the ages of 14-22. Ms. Lowndes, and her promoter Time, need no other Mansons.

* * *

A movie considered controversial even on the current X-rated market has won the award for best film at the Chicago Film Festival. It is Japan's ambitious effort not to lag behind America. "In The Realm Of the Senses" recounts the story of the gradual reversal of sex roles between a domineering macho-extraordinaire and a passionate ex-whore. After the man submits to his partner's sado-masochistic desires he, at last, agrees to let her strangle him to death during intercourse — a scene ending with his post-mortem mutilation (castration). However, the most fascinating is how Psychology Today reviews the film:

> "These people, in life and in the film, were emotionally ill. Yet their moving story offers normal adults an opportuntiy for an important educational and cathartic experience. Many of us still are ashamed of and afraid to admit to infantile feelings and 'dirty' fantasies. These are subjects that have been called obscene for too long — both in life and in the movies."

At one time, normal people were used as models to help rehabilitate society's deviates and disordered. But Psychology Today offers a revolutionary solution. "Normal adults" can now receive "an important educational and cathartic experience" by watching two sick persons (through their own distorted eyes) brutally mistreat each other for their own contorted pleasures. Why normal people should need such a cure, Psychology Today does not reveal. We think we know why. After all, it is better to stay in business than to make sense.

— Richard A. Vaughan

Mr. Vaughan, who is 23, works for the Rockford College Institute.

ON PORNOGRAPHY

So . . . shun damnable deeds. For this there's at least one good reason
Lest our children repeat the crimes we have taught them . . .
Far off, far off, ye unholy
Girls who work for pimps, parasitical night-wasting singers.
To a child is due the greatest respect:

Juvenal "An Education in Avarice"
60-140 A.D.

Some things in life, such as war, death, disease and poverty are tragic obscenities, ugly and unpleasant incidents which honorable men have virtually no control over. These incidents can be viewed as obscene realities. They stimulate the virtuous regions of man's imagination so that he can reform the ugly, destroy the unpleasant and elevate himself above the chaos he knows is life-endangering.

A completely different obscenity involves the pictorial brutalization of women and men. This obscenity hides behind an image of art and a myopic interpretation of the first amendment. It is a vulgar phenomenon over which dishonorable men have total control. This obscenity bruises imagination, and makes love a four-letter word. When gazing at such photographs and pictorial essays my imagination twitches as sub-consciously honor and truth become objects of neglect and sex evolves into a gratuity.

With all my heart bleeding so with disgust some may ask "Why does the man allow himself to be exposed to the subject?" The simple answer is a sudden lapse in common sense. I have allowed trash to streetwalk through my heart. My creative capacity is thwarted. Being subjected to cold, vulgar copulation extirpates my potential for describing the passionate and romantic with beauty. The ebullitions of art are infected with banal spontaneity. My imagination is laid to waste.

Yet by no means am I suffering the paroxysms of an artist who won't sell out. Even the artist should beware. How many minds, influenced by the irreverent perversions so abundant today, can we creatively capture with our talents? What can the artist do when the bowels of society tyrannize the stage and magazine rack? When our audience, the public, vicariously accepts the sexual organ as the new social symbol?

If I can place myself in the child's world for a moment, the situation appears even more bleak. The child and adolescent begin to regard obscenity as platitudinous, perceiving the vandal peddler of vulgarity with a warped admiration. Parents will fortify themselves with dull moralistic stories and warnings which only stimulate curiosity. What chance do abstract sentiments have against the monstrous, visible and believable weapon of the observant eye? The child's mind becomes a shuttlecock and the moralist parent is likely to lose the serve.

What is required is that my generation attain the audacity to tell itself what is good and what is bad. We must realize that the current growth of pictorial obscenity is offensive to civilization.

It is like tatooing society with depravity. Each marking blemishes the texture and hue of the form. Eventually society becomes a grotesque Queequeg contemplating its own death.

The citizen who replenishes our world with vulgarity will always be with us, and his removal is not necessary or even favorable. It is what serves as his strength which must be weakened. His strength is the ability to make trash, in its useless form, into profit. The polity must have the ability to accept the sincere and limit the exploitative. The art can be grotesque, it can be arousing, but it will be art, non-exploiting, reflective and original. An obscene entrepreneur wants profit at the expense of the naked body; he thereby destroys myth and produces a moral inversion. Surrogate myths of explicity corrupt beauty. The artist, through the millenia, has craved beauty, the pure environment to seek beauty and an honorable recognition of his endeavor. The problem is, whom do we recognize? It cannot be both.

— James D. Armstrong

Mr. Armstrong is 23 and he writes poetry.

SEXUAL CONDUCT AND SOCIAL DECOMPOSITION

The moralist, like the executioner, is something of a pariah in America today. To suggest to others what is right or wrong conduct is to provoke such scorn that many who work in fields wherein moralizing was once obligatory -- pastors, professors, parents and presidents -- have come to disguise their preachments, if indeed, they have not altogether abandoned them. Therefore, when the President of the United States benignly urges marriage upon colleagues of his who are "living in sin," the reigning pundits of the media are simply flabbergasted. It is almost unthinkable for them that Mr. Carter could be serious in that advice. It is as if he had done something in very bad taste, but since the norms of good taste as well as the norms of good conduct have been abolished by the new morality, the commentators are silenced by their own precepts.

The libertarians, who are so frustrated over the extent of formal intervention in the nation's economic activity, ought to have a countervailing sense of triumph as our society swiftly moves toward the absence of recognized limits governing personal behavior. Unless, of course, they have the wisdom to understand that it is the absence of effective norms of human conduct which feeds the growth of governmental regulations, restrictions and welfare services. A nation is not a mere aggregate of free-functioning individuals. The nation is, itself, an organism that is viable only if its component parts operate with a certain degree of mutual compatibility. In a successful free nation, that harmony is possible only because individual decisions are governed by codes of conduct which the citizens have been trained to respect and observe. In a free nation, the citizens must be taught to do certain things and to refrain from doing other things, in order that the machinery of society can function. In the absence of voluntary compliance with minimum standards of personal conduct, standards must be imposed by force or the group disintegrates.

In the realm of private enterprise, it must be recognized that the genius of the market economy is not sufficiently comprehensive to assure economic success if the population comprising that economy is undisciplined, each person doing as he pleases. As we are now witnessing, the human desire to improve one's lot, which energizes the market economy, is a two-edged sword which can thwart and discredit our economic system when unrestrained desires for material benefits result in shoplifting, embezzlement, wholly unrealistic wage demands, and other acts which drive prices up to a level that the inherent advantages of the market system are neutralized.

In addition to the damage done by dishonesty and coercive greed, our economy suffers from the collapse of norms of conduct in the private lives of the citizens. The productivity of any individual, be he executive or day laborer, is affected by his psychological state. The person who is subject to frequent emotional stress cannot focus his attention as effectively on his work as can the person who has a fairly high level of stability in his home life.

Although studies have calculated the jeopardy to physical health resulting from a death in the family, relocation and other major changes in living circumstances, there seems to have been little effort to calculate the decrements in work efficiency for the individual who is preoccupied with concerns about the manner in which a former spouse is raising the children, the personality adjustments with a new paramour, or the many other psychic stresses that have resulted from the breakdown of the family unit and the rejection of the code of sexual mores necessary to bind the family together.

It is naive to suppose that only prudes and the clergy should be concerned about America's accelerating efforts to surpass Sodom and Gomorrah. All of us will pay a price as the society is burdened with the care of generations of children emotionally damaged by the home turmoil in a swinging society. One can foresee the day when we may need more psychiatrists than postmen and more prisons than office buildings.

Even those who are not guided by religious and ethical considerations must recognize on pragmatic grounds that the sexual "revolution" is individually, socially and economically disadvantageous. Thus the question becomes: What is the most appropriate means for our kind of nation to disengage itself from a popular form of self-destruction? There are two primary options — education and legal restraint. The most powerful educative forces, the schools and colleges, and the print and broadcast media, seem almost totally disinclined to encourage our citizens toward self-discipline in much of anything and least of all in matters of personal conduct.

Under the circumstances, thoughtful and concerned citizens would do well to consider the startling proposition advanced in this paper by Leopold Tyrmand.

— John A. Howard

Dr. Howard is the president of Rockford College and has worked for 30 years in the field of education.

THE GLANDULAR STENCH IN AMERICA

". . . There's the King's Messenger. He's in prison now, being punished: and the trial doesn't even begin till next Wednesday: and, of course, the crime comes last of all."

"Suppose he never commits the crime?" said Alice.

"That would be all the better, wouldn't it?" the Queen said.

Lewis Carroll: "Through the Looking-Glass"

1.

In this essay, I will suggest the need to consider the introduction of formal censorship on pictorial representation of human sexuality. The survival of humanness in America may now depend on such a prohibition.

Censorship, both as notion and practice, is alien to freedom and democracy. However, it has been instituted in America during wars and removed when the danger has subsided. I do not believe that any word whatsoever should be forbidden: I think that obscenity in print should not be subjected to censorship for the corrupting force of the word is ambivalent, its impact psychologically and socially unmeasurable. The First Amendment, a source of controversies, precisely states the protection of the word, spoken and written. But nowhere does it mention that it is protective of images in the same way. The perniciousness of the visual can be assessed. Those of us who see no distinction between the role of image and the role of word just prove that the last 20,000 years of evolution, civilization and culture have been squandered on them.

Censoring mail and newspapers, approved as necessary during wartime, never turned into an accepted practice during peacetime in America. Thus, the question which must be thoughtfully examined is: Are we in a state of emergency or even at war?

2.

Appearances do not indicate such a condition. Trains arrive on time and there's an abundance of milk in supermarkets. However, a war is going on. A ruthless invasion is taking place right now, and we all are its potential victims.

A sizable social group, which believes that anything pertaining to sexuality can be publicly shown, has lately established its supremacy over the society and is murdering our sensitivities, our sense of privacy, intimacy and shame — all precious features of humanity that have evolved as characteristics of civilized life. A coalition of shallow writers, militant liberals, dogmatic sexologists, narrow-minded psychologists and brazen smut peddlers, motivated by either ideology or greed, has acquired, through political and financial factors, an enormous influence and leverage throughout the republic. It wages a merciless war against human imagination — man's invaluable property which gave him an unusual status in nature. If their victory is complete, we are doomed to self-destruction.

We must defend ourselves. We have little choice and we must select the best weapons to protect the crux of humanity. As unpalatable as it may look, censorship is one possible weapon.

3.
The non-stop encroachment of pornographic images must be termed war against human sensitivities. Only people who avert their eyes do not see the equation that is written on the wall: "Cheap sex makes human life cheap!" When sexual acts become a meaningless, or trivialized pastime, when lewdness and prurience become hackneyed by a total lack of restraint or conventionality, it is a sign that a carnage has either just happened or will follow. The sexual experience, as it is now inculcated by the Liberal Culture into the popular consciousness as a purely physical circumstance, a banal facility, just a matter of metabolism and excretion, or a modish "means of communication," brings about a hazy anticipation of an unnamed holocaust. The cruelest catastrophes of history — endless wars, dehumanizing persecutions — were always associated with cheap, instant, mass-produced, animalistic, benumbing sexual dissipation which results from the abrogation of sexual conventions. A mournful orgy accompanied the downfall of Rome, the atrocities of Attila and Genghis Khan, the Thirty Years' War, and the liquidation of the Warsaw Ghetto.

4.
Even if we dismiss the premonition of terrible events, the need for censorship seems evident when we face the everydayness of the sexual chaos. With sexual matter as the ever more frequent theme of television, music, and books, we live amidst a glut of non-

sense that drowns the society in an all-encompassing vacuity. The end effect is the brainwashing of people, a sort of Orwellian nightmare in which the ever present Big Brother-turned-sexual-preacher does not leave us alone for a moment and demands constant and humiliating submission to his henchmen: ubiquitous therapists, TV sexual experts, authors of sex manuals. The inundating flow of sexual news and the brutally stupid tabloid columns on the most idiosyncratic aspects of life and the human body are fully as oppressive as any totalitarian ukases. Predicting an unbearable political serfdom, Orwell was not unaware of how demeaning the serfdom of impulses and propensities which the Liberal Culture imposes upon society can be. People lose the sense and meaning of terms sex and normalcy, they crumble under the weight of shoddy clichés, presented to them by the Pornographic-Literary complex as science and social boon. A semi-literate Cable Vision TV Week circular, distributed in Illinois homes, advises its readers that in the PBS series, Rock Follies, "The stories include some graphic language and contemporary sex . . ." It's not euphemisms standing for pornography which are bothersome in this sleazy, mindless wording, but the successful assumption that America's heartland, once proudly provincial and independent, is sufficiently paralyzed by the New York-Los Angeles cultural axis to swallow every idiocy and accept sexuality as either ancient or obsolete or contemporary. The infamous exploitation of both procreation and fulfillment has become so crass and destructive that the survival of both the sanity and the genuine sensual gratifications requires effective tools of socio-legal self defense.

5.

The concerted effort to "solve" sexual problems with the help of statistics and scientific research, has a practical value of seeking to provide an automatic dispenser for human destinies. Such efforts have multiplied from Freud and Havelock Ellis on through Kinsey, Van der Velde and Masters and Johnson, down to the numerous cohort of feminists and quacks. I believe that both science and pseudo-science have improved nothing in this sphere and that the human sexual universe is as enigmatic and vulnerable today as ever. However, the labors of honest scientists and charlatans alike have indeed had a result: human sexuality has been submerged in triteness, paltriness, vagueness and vulgarity to an extent unknown before; the most ruthless hawkers of the sexual rubbish in mankind's history have been legitimized by a bizarre cooperation between science and "science" in the pages of popular magazines. In the absence of an effective defense weapon, a limitless escalation of abomination and degeneracy in the pursuit of ever new thrills has come gradually to determine our culture.

Not long ago, the Illinois newspapers began to carry headlines: "The Sexual Abuse of Children!" or "Child Porn Rampant in America!" One might suppose this to be a phenomenon of street-level depravity, or the jaded rich. But in 1975, the Saint Martin Press, a respectable Manhattan firm, published an album entitled "Show Me," which has been prominently displayed on the New York elite's coffee tables ever since. In it, a psychiatrist and teacher, together with an acclaimed photographer, undertook a thoughtless and repulsive incursion into the world of juvenile sensibilities. In glossy, suggestive photographs, 10 to 14 year olds of both genders adopt lascivious poses, mutually examine genitals, try desperately to imitate the adult world in its normal endeavors and sensations, which at their age is blatantly abnormal, faked, full of sham. The book ". . . is an explicit, thoughtful and affectionate picture book designed to satisfy children's curiosity about sex and sexuality — their own as well as that of their elders . . ." — says the blurb, which also provides the endorsements of a director of the New York Medical College, the Unitarian/Universalist Association of Churches, the San Francisco Chronicle and Examiner, and Wilson Library Bulletin. In the text, Western society is repeatedly denounced as still "repressive," even though a short stroll through some New York City streets would make a tourist from Gommorah blush. We read there too: ". . . Embraces and caresses (of the genitals) are fun and pleasurable for both children and adults . . . ," and I can't help asking: What is the difference between a scientist who condones the sexual arousal of adults by children and vice versa, and the knave who psychically and physically abuses children when filming "Lollytots?" However, scientists whose sense of responsibility is difficult to recognize keep advising America on TV talk shows, lionized there by demi-intelligent hosts who seem to fear that common sense will result in a decline in Nielsen ratings. A strange alliance between scholars and garbage mongers is producing a breeding ground for vice, inconceivable in former ages.

However, the worst that is wrought upon youth by "Show Me" is its truculent destruction of children's unique quest for hidden meanings of sexuality which they do not want to have programmed by adults like a school curriculum. Adults may know more about arithmetic and social obligations, but they have forgotten rewards that come from one's solitary groping for explanations, from one's own handling of the pre-puberty anxieties. What both sexual scientists and sexual witch doctors pursue is their collectivist censorship of the individual and imaginative exploration of mysteries; even if this search is so painfully short-lived, the sexologists hate every bit of its sanctity and secretiveness. Countless polls reveal, actually, the youth's longing for a firm code of behavior. The adults, obsessed with "reform," do not want to acknowledge the polls. The authors of "Show Me" enforce on children their preconceived, theoretical regulations which are meant to sanction their factitious sexual "revolution."

It may be that the censorship of graphic sexuality must be exercised by American communities to defend their children against the raging abuse of common sense.

6.
". . . after entering the world of skin shocks, all moral and social distinctions tend to blur —" wrote a young reporter about the "pink" press not long ago.

The skin magazines and their raffish editors invoke aesthetics of the nude human body as their prime mover. They swear by Phidias, Michelangelo and Matisse. But it is glands, not the body, they both feature and address themselves to, and there is no aesthetics of glands nor has there ever been. Playboy, Penthouse, and Hustler provide a vile rendition of carnal intimacy. Intimacy for sale means its ultimate debasement. Bringing the nation down to all fours, to the canine posture of sniffing in public, seems to be those magazines' only goal.

Those who defend the civil rights of smut peddlers to peddle smut often insist that, if ignored, the effort to excite through nudity and pornography will become so boring that no one would pay any attention to it. But they are unable to answer the question: Why should both nudity and excitement be boring? Why should human sexuality, one of life's jewels, become dull, worn out and hackneyed? Why should all the benefits that we have received from visions of love and from the wealth of sensual sentiments be permitted to become extinct to protect foolish ideologists and greedy entrepreneurs?

The Porno-Liberal power, backed by the authority of corrupted science and financial machinations, may now be so firmly entrenched as to be countered only by the power of legislation.

7.
Many say: "Another Rome! Decline, decadence, collapse!" The similarity is striking, but between Rome and now there have been Christianity, gothic cathedrals, Dante, humanism,

Shakespeare, Rembrandt, the American Constitution, Beethoven and Einstein. A pornographic heat wave is no match for such an accumulation of values, but it appears that the civilized forms of existence retreat before massage parlors, the mindless radical chic of Harper's Bazaar, the robber barons who enrich themselves selling pictures of orifices, the female novelists who trumpet their demands to be both unwashed and desired. The vitiated tradition of liberty says: "Let's ignore it! It will bottom out, abate by itself, peter out, ebb out . . ."

That's an illusion.

Untreated funguses, discharges and sores do not disappear by themselves. They grow and contaminate the organism, weaken it so that it succumbs to disease. What has already been irretrievably lost, at least for one generation, is the sense of sexual dignity based on reticence and restraint which provides more than one dimension for a meaningful life. Sexual taste, seemliness, self-respect, even at a price of deprivation, are components of sexual elation, happiness, pride — words that soon may be eradicated from the vocabulary of sexual emotions, concepts that soon may vanish from our understanding. The mass parade of sexual paraphernalia will erode the sense of exceptionality — and it's hard to imagine how a society can survive without this scope of our minds. An entire generation, afflicted by the bombardment of sexologists and smut peddlers, has been sentenced to torporific and uglier life, although it does not know it yet. It will discover it later, with an all-pervading feeling of emptiness in their hearts.

8.

The crux of the matter is not legal but moral and civilizational. By declaring legality their champion, the pornographers skillfully divert attention from the true problem. And they are protected in their cause by the New York-Los Angeles Porno-Liberal media axis which chooses to ignore literate and intellectual argument against them. The media merchants in sanctimonious self-righteousness, who are in the business of selling scare in the editorial pages, are quick to brand as book-burners anyone who does not think as they do. The modish writers administer the coup de grace to any genuine moral concern, denouncing it as obsolete, bigoted, obscurantist, religiose, puritanical. There seems to be little choice for those who care about human imaginative sanctuaries other than to resort to law. A lawful distinction has to be made between the power of a picture and the power of the word, so that the ardors and torments that shaped the abundance of the human experience over millenia are not killed by anyone who owns a printing press and a camera and has enough money to abuse the First Amendment with the help of lawyers and casuistry.

Every state and every community in America should have the right to impose censorship on the pictorial presentations of sexuality. The claim that it would endanger culture is preposterous. Gambling is prohibited in many places but permitted in Nevada: whoever lusts for gambling may go to Las Vegas. Pornography may be permanently ensconced on 42nd Street and Sunset Strip — whoever finds it necessary may pilgrim to those Meccas. The argument that if prohibited, pornography will sell under the counter is self-defeating: it is exactly where pornography belongs, where it fits into social reality. It is its legality that makes it devastating, not its illegality.

In an age when Harvard University students have access to "A Student Guide to Sex on Campus" as well as a course catalog, freedom for decency must ask law and law enforcement for support. Some think it impossible to preserve democracy and eradicate rot, but de Tocqueville wrote: "Impossibility is considered a challenge in America . . ."

We seem to sit in a beautiful living room comforted by sophisticated technology and admirable works of art, while in the very middle of that imposing interior an enormous heap of excrement befouls the air we breathe. Some pretend to ignore it and fan themselves with lofty and learned treatises on civil rights, the First Amendment, the ambivalences of liberty. Others claim that such an atmosphere is salubrious. Still others believe that words like "Tolerance" or "Progress" will do away with stench if incessantly repeated. No one dares to reach for a shovel because the Liberal Culture has declared it filthier than the grounds of fetidness, and — at the same time — a taboo.

But the putridness will not be removed without a tool. So the choice is between an unprepossessing action and choking to death.

— Leopold Tyrmand

Mr. Tyrmand has been a free-lance writer for 30 years and realizes the woes of censorship.

CHRONICLES OF DEHUMANIZATION

An ad:

> SEXUALLY LIBERATED? Thousands of liberated couples and single girls in our members directory. Contact by mail or phone. Private swing parties, personal introductions. Nationwide. AMERICAN SEXUAL FREEDOM MOVEMENT. Call: California (213) 654-4336, New York (212) 682-2177, or write: ASFM, Dept. NYA, 8235 Santa Monica Blvd., Los Angeles CA 90046.

Where?

In *The New York Review of Books* — that *donjon* of American intellectuality, with the moral banners of left-liberal self-righteousness proudly waving from its turrets.

Do these prophets of pure wisdom and social virtue, experts on Stendhal, Turgenev, Melville and Thomas Mann, ever give a thought to what course a lone human destiny can eventually take after reading and following such an ad? What moves the editors of those noble pages to accept it? Ideological affinity with *Hustler*? Greed, perhaps?

* * *

Mr. Gore Vidal, a pornographic novelist and contributor to obscene publications, of late a champion for *Hustler* magazine's jeopardized civil rights, gave an interview to the Los Angeles *Free Press*, an organ famous for its prostitution trade advertisements. In the interview we read the following:

> "Idi Amin? He's fun . . . . . Not since Hitler have I laughed so much."

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"THEY HAVE NO VOICE"

May 2, 1977.—Reported by Marjorie Margolies

JIM HARTZ. What happens is an important story, a disturbing story; and you probably will not want your children to see it.

Sexual abuse of young children is a topic virtually no one talks about. We are just beginning to face it. Most experts seem to feel it is much more widespread than physical abuse, but it goes largely unreported. More than three-quarters of all sexual abuse is committed by people known to the victim—a friend, a family member. Sexual abuse knows no social boundaries; it happens in all neighborhoods.

For the past month, reporter Marjorie Margolies has been working on a special report, sexual abuse and the very young, "They Have No Voice." In order to protect the identities of some of her subjects, their faces and voices have been masked, some distorted.

Here's her first report.

[Clip of song "Bless the Beasts and the Children"]

MARJORIE MARGOLIES. By the time your daughter reaches 20, the chances are one in four she will have been sexually abused. It may be a so-called minor incident—perhaps someone exposes himself to her—or she may be raped.

WOMAN. I used to go to the store with this one man who was a friend of my father's. And—you know, they'd take me in. We had a long backyard. We used to go down there, and he'd stop me and give me money, you know, and he'd do things, you know, to me.

MARGOLIES. The abuser may be someone in her own home, like her father.

WOMAN. When I was about seven, and my father just told me to strip and get in bed. And being as afraid of him as I was, did exactly what he told me to do.

WOMAN. It included some starting off of fondling to actually having oral copulation.

MARGOLIES. It may be her brother.

WOMAN. [Unintelligible] . . . I would scream, and tell anyone in my family, that he would kill me.

MARGOLIES. Your sons are not immune either, but are less vulnerable. One sexual child abuse case in 10 involved a young boy.

MAN [distorted voice]. One of my friends told me [unintelligible] run away from Baltimore, Maryland [unintelligible] down to see what I might have in store for me. [Unintelligble] tied to the bed. There had been seven or eight other men in the apartment who had raped the boy within the last three or four hours.

MARGOLIES. Incest, sexual abuse, child pornography, selling young boys for homosexual play; it all goes on. No one knows what the figures are, but all seem to agree they're high.

WOMAN. I think it's as widespread as alcoholism, suicide attempts, any other social problem.

MAN. We've charged doctors, lawyers, a boxer, police officers; a member of the family, the child's father, many times.

MARGOLIES. The average age of the young sexual abuse victim is 11. Some are as young as three months.

WOMAN. You're relying on the people who are intricately involved in a hidden secret to come out and tell an outsider. So, obviously, the only real cases that we find are self-reported, either by the child or the mother.

MARGOLIES. Four-year-old Jenny's mother is a prostitute. On several occasions when she was arrested, the youngster was left in the care of her mother's boyfriend, who raped and battered the child.

As in most cases like this, Jenny was too young to testify against her assailant. He was set free. Jenny was put in a foster home, but her mother kidnaped her several months ago. They've not been heard from since.

Experts have placed those who sexually abuse children in three categories. The first is a person, like John, who never fully matured, never married. As one doctor put it, he's primitive and looks like he couldn't harm a fly.

JOHN. [Unintelligible] just loving them, being nice to them, give them little gifts and they'll be nice to you. Nothing special about it. Just like you'd have an ordinary woman, I suppose.

Margolies. In the second category we have the aggressive type, usually a man for whom sex becomes an obsession, like Arthur Goode, the 23-year-old who sexually assaulted dozens of young boys and has been convicted of killing two young boys, one a Falls Church young, 11-year-old Kenny Dawson.

These men are usually social outcasts. They are normally violent and sexually impotent.

Man. I always thought I was trying to teach my daughter something.

Margolies. The third type is someone who looks and acts normally. He or she—usually it's a man—has demonstrated a higher level of maturity, but somewhere along the way has regressed. The incestuous parent falls into this category.

Man. During the encounters, I didn't visualize her as my daughter. And going way back in my mind, that the only thing I can think of her was as a girl, and myself as a boy, not as a man; that I was going back, playing the role of a 10- or 12-year-old kid and experimenting.

Elizabeth. Being molested, being told to be a good little girl, don't say anything.

Margolies. When Elizabeth was very young, her father repeatedly molested her. When she was about seven, her family became financially strapped, and her father sold her to men who were allegedly helping out the family.

Elizabeth. And that person was forever getting me caught, and it was oral. I didn't know what to say. I didn't really know what was happening. All I knew was I didn't like it.

Margolies. You'll notice when Elizabeth talks of the sexual abuse she experienced, she reverts back to the voice of a young child.

Elizabeth. I'd gone to my father and my father had said, "Don't worry. I'll take care of it." But nothing ever happened.

Margolies. Elizabeth married and divorced. She has two little girls. She says, to this day, she can't function normally.

Elizabeth. Why did it happen to me? Why did it have to happen at all? And I don't have those answers, and maybe I'll never find those answers.

Margolies. Most sexually-abused children don't understand the significance of what's going on; they're too young. The assailant usually uses his authority to convince the young child that this is a normal thing to do, part of growing up.

Woman. "Beware of strangers," Mommy said, and daddy echoed, too. But strangers weren't the ones to dread. Dear Daddy, it was you.

"They Have No Voice"

[May 3, 1977.—Reported by Marjorie Margolies]

Jim Hartz. What follows is a report about a disturbing and widespread problem. It's for adults and not for children. Tonight we continue this special report on sexual abuse in children, "They Have No Voice." Tonight a look at incest, society's most fundamental taboo, sex between family members. Police say incest is the least-reported of all crimes and that it's extremely widespread.

For more, here's Marjorie Margolies. Marjorie?

Marjorie Margolies. Jim, in putting this series together, I met a woman by the name of Janie. Janie's 20 now. She says she's had 10 pregnancies, the first two by her father; one when she was 12, the other when she was 13. The first child lived for four months, the second was stillborn. Two of her children are still living today.

It all started when Janie was six.

In order to protect the people we interviewed for this report, their faces and voices have been masked, in some cases distorted.

Janie. When I was about seven, and my father just told me to strip and get in bed. And being as afraid of him as I was, I did exactly what he told me to do.

The physical pain was unbelievable. It wasn't a once-in-awhile thing; it was three-four times a week, sometimes more.

Only sick people would treat children the way I was treated.

Margolies. Janie says her father told her he'd kill her if she told anyone. And when she could hold it in no longer, she told some people. No one believed her.

Thelma remembers very few details of the years between eight and 16. When she was eight, her mother and father got a divorce. She remained with her mother. What happened to her was so painful that years later, as she spoke with me, she broke out in a rash.

THELMA. At first, she introduced me to sex between women, with her. I became her bed partner, and I found that it was comforting and that it was, in a way, her way of loving and caring for me.

MARGOLIES. Thelma says her mother turned her on to drugs. Then, when she was 16, this:

THELMA. I came home from school in the afternoon to find her hanging in the basement.

MARGOLIES. Incest involving a mother is fairly rare. At least it's rarely reported. The most common type is that of father, or step-father, and daughter.

MAN. It wasn't something that I planned on doing, and it just—however, it did happen. That blew all my personal beliefs in what a so-called sex offender or child molester is. I had some definite ideas that they were low-income, they had no education, they had a prison record a mile long; and this could never happen to me.

MARGOLIES. Incest happens in places where you'd least suspect it. It knows no racial, economic, or religious boundaries. It is, according to police and social-welfare experts extremely widespread. Father-daughter incest is reported five times more often than brother-sister incest. Yet experts agree brother-sister incest is most likely five times more prevalent than father-daughter incest, yet it's dealt with differently. If the parents discover it, it's usually handled at home, and not reported.

MAN. Sexual abuse or incest, it's probably going on in the quantity that we would not even be willing to accept, but it is, and it's part of child abuse. It's something that's hidden, it's something that we're unable to control. It's an active parent, particularly the father, who often times is the perpetrator.

MARGOLIES. Incest often happens in homes where the mother and the father are not having a good sexual relationship.

MAN. It was something that I couldn't control. I needed the touching, I needed to feel free about it, and I needed to be touched; and I wasn't getting it.

WOMAN. We usually find that there is some marital problems related around sex at this time, where they are made to feel impotent or inadequate, somehow, with their wife. And it is a natural kind of reaching out that they turn to their children to give them some kind of emotional or protective support. And, unfortunately, in some cases it is a sexual response that they ask for from the children.

MARGOLIES. The abuse can occur when the children are left alone with one parent, generally their father.

MAN. Most of the times it took place in the afternoon, between the time that my daughter was home from school and my son was out playing and my wife was still at work.

GIRL. Or he'd do it when she went to the grocery store or she had to run errands, or something like that, for someone else.

WOMAN. I couldn't understand why he couldn't find a prostitute or anybody, anybody else, another woman. Why a child?

WOMAN. Generally, it is a temporary regression in their sexuality. It is a returning to the stage of being fondled, of maybe some things that they missed when they were children.

MARGOLIES. The father in an incestuous relationship often fears being caught, perhaps bringing home a disease. And he'll often rationalize what he's doing.

MAN. There was never any protest from my daughter. I never threatened her, never attempted to hurt her. Anytime there was any physical pain to her, it was immediately stopped.

WOMAN. The problem is that although mother says she's not aware of what's going on, in many respects she's very much aware, especially on an unconscious levels.

GIRL. My mother had to know. She just wouldn't admit it to herself. Maybe it would make her less a woman.

MARGOLIES. Oddly enough, it's not uncommon for incest to happen in families where there are a lot of religious taboos. This young woman's father was a religious book salesman. First, she had sexual relations with her brother. She was eight.

Woman. They were too wrapped up in their religion to even care, you know. I mean they worried about saving everybody else's soul, you know, but their own family.

Margolies. And when she was 12, her father had sexual intercouse with her.

Woman. He really was going to give me a beating. And the next thing remember, we had had sex.

Margolies. Incest is often passed on from generation to generation. That is, the mother, many times, had been molested by her father, then married a man who will do the same thing to their daughter.

Woman. It was about a year and a half before I had discovered that my husband had been molesting my five-year-old daughter. I was 13 years old when I was molested by my step-father.

Man. We're exactly where we were 15 years ago with child abuse. Either we look at it with severe neglect or we look at it with severe retribution. In other words, we don't know what to do about it, it's insidious, it's hidden, it's a family affair.

Margolies. What does this do to the victim, the young girl who no one seems to believe.

Girl. If I were to run into my father, I'd kill him for what he's put me through.

Margolies. Perhaps the worst part of incest is the sense of betrayal that's felt by the victim. Their told not to tell. Besides, they've complied. And the person who's involved in the actual relationship is usually someone they trust and respect. They live with a secret that is far too big for any young child.

Jim?

Hartz. Marjorie, a question occurs to me. This must be terribly widespread, much more so than any of us realized, to merit this attention.

Margolies. It really is. And the thing that struck me most about it, doing the series, is that we've—we've grown up to accept the fact that we should not take candy from any men and we should watch out for the men in the bushes and in the cars and everything. It turns out that 75 to 80 percent of all sexual abuse occurs between a child and someone the child knows quite well.

Hartz. For somebody who's been involved, what can they do?

Margolies. Well, we've gotten many calls today; as a matter of fact, from women who have asked. There is one sexual abuse center, sexual assault center in PG County. There is another incest center, which Weekend has focused in on, and we've gotten some of our victims from them. They'll focus in on this on Saturday night, and this is in California.

Hartz. Marjorie, thank you very much.

"They Have No Voice"

[May 4, 1977.—Reported by Majorie Margolies]

Jim Hartz. This next story is about a widespread problem in our country, and because of the subject matter, it's for adults, not children.

If your child is attacked by a stranger, the whole family lends its support. But what if the attack comes from a member of your own family? What if you discover there is sexual abuse in your own home? What then?

Well, the victim is often blamed; the victim becomes a victim. And that is the subject of tonight's special report, sexual abuse of children, "They Have No Voice."

In order to protect the identities of the people we interviewed, their voices and faces have been masked, and some distorted.

Majorie Margolies reports.

Woman. And he'd come into my room at night and, you know, we would [unintelligible] have sex. And I wanted—I don't know what to do. You know, I didn't want to tell my mother, and I really didn't have anybody I could tell.

Woman. It was fear that kept me from saying anything.

Woman. I couldn't tell my mother. You just don't talk about it.

Marjorie Margolies. And when they told, in many cases, they weren't believed.

Woman. . . . was too afraid to tell anyone, other than my mother, and she wouldn't believe me.

Woman. The mother is not physically present at the time, generally, of the abuse. She may be in another room, she may be downstairs. She's aware that something is going on, but for her own safety, she chooses not to investigate, she chooses not to understand, she chooses not to hear what her children are telling her.

Margolies. Sylvia got repeated signals from her daughter, but she didn't put two and two together.

Sylvia. The one that's ten now used to beg me not to leave her home alone with him.

Margolies. The reason she couldn't tell her mother was because her father had told her he'd kill her mother if she did. Then she'd be left without a mommy.

Ten-year-old Samantha told her mother, despite threats from her father. Her mother believed her and did something about it. But still Samantha shows signs of pain.

Samantha. And if somebody starts talking about him a lot, then I start running to my room and I start crying.

Margolies. What is it that makes incest so much a secret? We set up a session at Children's Hospital to find out. None of these children has been sexually molested. Children's is interested in preventive therapy for child sexual abuse.

Peggy Dolan. And if you feel uncomfortable with something that someone asks you to do or tries to do with your body, you, as children, have a right to say no.

Margolies. Psychiatric nurse Peggy Dolan tells the children they, of course, shouldn't trust strangers, and they understand that. But what if the person you shouldn't trust is Uncle Harry? The children's reaction explains why incest is usually kept a secret.

Dolan. Now, they are the situations that are difficult to handle. And what would you do in a situation like that?

Child. I don't like doing things that—you know, that embarrass grownup, you know, like, you know . . .

Dolan. That embarrass grownups?

Child. 'Cause I love them and I don't like to say mean stuff in front of somebody that I love or like.

Child. I would be scared to, 'cause I like my uncle.

Margolies. Children are vulnerable because they are really trusting. And what's the price one pays for keeping the secret, whether the involvement's with Uncle Harry or someone in the child's immediate family?

Man. There are no scars, there are no external evidences of the child's being infected with abuse, and there are no X-rays you can take. And so you have a problem which is compounded by the fact that you can't even make a diagnosis.

Margolies. Jeanie Harris, who was herself sexually molested as a young child, is now involved in trying to set up a sexual abuse center in Montgomery County.

Jeanie Harris. You don't know what's happening to you. You don't have a name for it. There's no polite word in our society, a polite description of it. We don't learn about incest in school. We don't even learn what a normal parent does.

Margolies. This is a drawing by a child who's been a victim of incest. It was drawn by a ten-year-old girl who had been repeatedly molested by her mother's boyfriend, Michael. She divides her drawing into two parts, typical, they say, of children whose lives have been ripped apart. Her self-portrait is this eye. Experts say that's classical of children who hate themselves. She's very explicit about these three phallic objects in the corner of the picture. They represent, she says, Michael's penis.

What happens to these youngsters? Well, some, a very small group, are fortunate enough to get help. Many turn to drugs.

Man. So the question's often asked: What do we do about incest? What do we do about sexual abuse? First of all, we have to look at it as being a problem which does exist, and it exists, let's say, perhaps, a thousand cases have been reported by the American Humane Association per year. We know that over 25% of our prostitutes have experienced incest. We know that over 45% of our drug addicts have given a history of being sexually violated.

The psychological damage is just so severe.

Margolies. Not surprisingly, many of the victims of sexual abuse view their bodies as salable objects, not to be particularly respected.

Incest leaves the children very mixed up and feeling very much alone. The hurt remains as hidden as the problem itself.

The 11-year-old boy who drew this picture was molested by his mother. He has divided the picture into two parts. As we said before, that's typical of children whose lives have been ripped apart by sexual abuse. He explains the top part is his new life, in his foster home; the bottom part, in purple, the color of pain, is his old life with his mother. He says, "This is me. I'm trapped inside my mother and I can't get out."

"THEY HAVE NO VOICE"

[May 5, 1977.—Reported by Marjorie Margolies]

JIM HARTZ. This next story deals with a disturbing subject. It is for adults and not for children.

Experts put the number at well over a half a million, more than a half a million children under the age of 16 involved in sex for sale. They are either part of the growing young pornography industry, teenaged prostitutes, or they are youngsters, mainly boys, who are sold for homosexual play. They're called chickens. Some experts believe they are all connected. And one of them, Dr. Judy Anne Denson Gerber, has started a campaign against child pornography. Through her and Congressman John Murphy's efforts, over a hundred members of Congress have cosponsored legislation to place child pornography under the child abuse laws.

Tonight, in part four of our special report on the sexual abuse of children, "They Have No Voice," we take a look at sex for sale.

Marjorie Margolies has more.

MARJORIE MARGOLIES. She's 10, we're told. Her younger brother is eight. Their mother produced this film. Before the end of this movie, they'll have sexual intercourse.

Many of the older youngsters, between 11 and 16, who are in the pornographic films are runaways, runaways like Sandy.

SANDY. I haven't got no place to go, no food, no nothing. I was just in the streets, [unintelligible], hungry.

So [unintelligible] started doing pornography with Freddy. And I didn't understand it, really. And we used to do it when we was together, me and him, or somebody else and him, or just me by myself.

MARGOLIES. Sandy's been on the streets since she was 13. First she found men for prostitute friends. Then she started to prostitute herself. That was when she was 14. She had met a man named Harry.

SANDY. He had told me that I was a pretty—you know, like a pretty girl, and everything, and that we could make money together. So, like, I went with him.

WOMAN. How did they treat you?

SANDY. They treated me like—like you would treat like a wild dog out in the street. If it didn't do what you wanted it to do, you kicked it.

MARGOLIES. How did she feel while she was making these films?

SANDY. As a piece of dirt nobody would want. Girls my age wasn't doing what I was doing. I mean they were about like getting married and having babies and high school proms, and the whole bit. I was nowhere near that.

MARGOLIES. It used to be that child pornography was imported. Now most of it's being produced here.

Dr. Denson Gerber says she's identified about 400 different American children in the literature she collected. She bought it all over the United States and as far from home as Sydney, Australia.

What disturbs Dr. Denson Gerber the most is the kind of stuff that's being produced, and its impact.

DR. DENSON GERBER. What saddens me is the majority of the material promotes incest, encourages men who are borderline, who are going to need rationalization or excuses, at least, to push them over, to break down their defenses, to go home, and it tells them it's a good thing. I mean there's actually in this pile of material a manual for a sex molester and how to go about it and not get caught.

MARGOLIES. With Robin Lloyd, an investigative reporter from Los Angeles, I went to a pornographic bookstore at 14th and H Streets.

ROBIN LLOYD. I counted at least 150 titles in paperback books alone that deal specifically with incest or relationships with children.

Margolies. We found a variety of books all promoting incest and sexual abuse of young children. In addition, we found books like this one. It uses girls 15 and under.

For the most part, the District of Columbia is pretty clean. Heavy sales have been reported in cities like Chicago, Los Angeles, New York, Flint and Detroit, Michigan, New Orleans and Philadelphia.

According to reporter Lloyd, pornography and the young constitutes only a small portion of the sex-for-sale market in the United States. The sex-for-sale market is mostly dominated by young boys called chickens. Their pimps are called chicken hawks, and it's big business.

Lloyd. About 300,000 boys across the country, under the age 16 or so, are either engaged in this on a part-time, once-in-awhile, or fulltime basis. It is a gigantic market.

Man [distorted voice]. I've never picked up a child on the street who was not hustling. I've never forced a boy to do anything he didn't want to do.

Margolies. Lloyd says he's found chickens and chicken hawks in almost every city he's been to, small and large. The chickens hang out at bus stations and places like Times Square in New York. For anywhere from 10 to 50 dollars, they sell themselves to homosexuals, so the young boys become consenting children.

Boy. Great, fun, everything. You've got clothes on your back, money in your pocket, food, a place to stay, and everything.

Lloyd. It is not a case of a child being forced to do an act. A child is inveigled into it, either by money or by drugs or by pornography, or a combination of all three; and then performs this act, and suddenly realizes that his body has a marketable value.

I think the real damage that's done mentally to a kid—you must develop a bitterness towards adults and towards humanity, where you feel that you have to sell your body to receive this kind of adult attention that most of them seem to need.

Margolies. Chickens are on a circuit. That is, they move from city to city so that homosexuals in the market can have some variety.

Boy. One time I was over Times Square, and a guy I met just said, "Spit on me, beat me up," and then said that was just the way that he enjoyed [unintelligible] sex. I was, you know, [unintelligible] like that, you know, [unintelligible].

"They Have No Voice"

[May 6, 1977.—Reported by Marjorie Margolies]

Jim Hartz. What follows deals with an important and serious problem. It is for adults and not for children.

This week we have been presenting a special series of reports on the sexual abuse of children entitled "They Have No Voice." Tonight, in the final portion, we take a look at how difficult it is to deal with the problem at all levels.

In order to protect the identities of some of our subjects, their faces and voices have been masked, and some distorted.

Marjorie Margolies reports.

Woman. I was home, and my dad was working at a certain company. He took me to work with him, and he had intercourse with me at work.

Woman. When I found out, I was appalled.

Man. And I asked her did she like it at all, and she answered, "No." And I says, "Then why didn't you say something?" She just came out and said, "How do you tell somebody you love that you don't like what they're doing?"

Marjorie Margolies. Part of the reason why sexual abuse is so under-reported is most of the people involved, even the children, know or fear what the outcome will be.

Nancy Hall. You're the only person that she's told.

Margolies. The Prince Georges County Sexual Assault Center, located in two former storage closets in Prince Georges Hospital, is the only facility in this area devoted solely to sexual abuse. The head of the center, Nancy Hall, is handling a call from a hot line operator.

Hall. Does the uncle live in the home?

Margolies. Nancy Hall admits her operation is treated like a stepchild by the hospital. They are understaffed and overworked.

For the most part, throughout the country, sexual abuse is either mishandled or not handled at all.

Woman. I will wake up, and it really didn't happen. And that will last for awhile. It generally lasts from three to four weeks.

Woman. I would like to see the system start really protecting the child. And I would like to see the child have some say in what is best for them and what they want to see happen.

Woman. The primary treatment method that is used today for cases of incest is to figure out how to get the family to move out of your distrub because no one else—no one knows what to do with them. So if you can get them to move away, out of your responsibility, you can close the case.

Margolies. This woman's estranged husband has sexually molested their two daughters. She lives in her Virginia; the molestation took place in Maryland. Virginia authorities say Maryland should handle it, and Maryland authorities have told her Virginia should handle it.

Woman. And then if you go to the legal system for help and you're ignored, the feeling is horrible. You want to run, but there's nowhere to run to. You want to ask for help, and there's no one to help, because no one does help. Everyone just turns their backs on the situation.

Dr. Raylene Devine. Many times I will talk to the child, make sure there's no actually physical need to do that exam at that time; the child's not bleeding.

Margolies. Dr. Raylene Devine from Children's Hospital has taken special interest in the handling of children involved in sexual abuse.

Dr. Devine. If the examination must be done, we can sedate the child at that time. But don't examine the child by holding the child down. That is probably the worst thing we can do.

Margolies. Here she tells other professionals how to deal with the child, especially immediately after the incident occurs.

Dr. Devine. Let the child know that you're talking to them in confidence and that you're not going to run out and tell the police and the parents right away everything. What you're going to tell is what the child wants to tell. Or if there's something the child tells you and you have to tell the parents, make sure the child knows that. Don't let the child overhear you telling something to the police that they've told in confidence. That's very traumatic.

Margolies. In many large cities, including Washington, police departments have put together special units to deal with sexual abuse, but all admit their jobs are not easy; and it's all compounded by the fact that their cases are so hard to prove.

Man. I'm not sure that we have facilities enough to treat them. I don't think that being institutionalized in a prison is a solution, either.

Margolies. You were taking the child away.

Man. We're taking the child away. That creates additional problems.

Man. Often there are no witnesses. And without witnesses, the most fundamental criteria in the criminal justice system—that is, who did it—is missing.

Margolies. Most expetrts agree children should be involved in the court proceedings only when it's absolutely necessary. But it's hard to prove most sexual-abuse cases without the primary witness.

Woman. I'll never forget a child who I was responsible for in a case where her father had been reported for incest. She was 11 years old, and she had done very well in the therapy. We were standing, talking, and they brought her father in in chains and shackled up, his wrists and his waist. And it dawned on her that she had created the situation of the court scene, and she said, "This is my fault. I did this to my father."

Woman. She came over and sat down and put her head down. And I said, "Hey, everything's going to be all right." And then she started crying, and I started crying. And she was so upset about her father going to jail. She told me she didn't mean for that to happen.

Margolies. Most experts feel the family unit is not taken into consideration. Take a case of incest. Say it's discovered at four o'clock on Friday afternoon. The inclination of officials is to jail the father or place the child in a foster home by six o'clock that night. Suppose it's been going on for four years. Is breaking up the family immediately the answer?

WOMAN. And they want daddy to stay with them, because they think he's the greatest thing that ever walked the face of the earth, and they just wanted him to stop doing the things that he was doing.

WOMAN. I think the effect that incest has on society as a whole is, in the past, they've very devastating. They don't want to know about it. They don't want to see cases of it. They want to shove it under the rug. But it's coming out more and more now, to where they have to take a look at it. They have to say it does happen. In ever-increasing numbers throughout the whole United States, it's happening. And they can't close their eyes to it anymore. They've got to say, "Why is it happening?" or, "What can I do to change the events?"

[Clip of song "Bless the Beast and the Children"]

MAN. If you even have a doubt in your mind that you would like to touch your daughter or your son or anyone, please seek help, because it's not fair for what you can do to yourself, your wife, and your children, mainly your children. Because these children have to carry this on their minds for the rest of their lives.

OBSCENITY—FORGET IT

(By Charles Rembar)

An attorney who helped to win landmark decisions against censorship in the 1960s presents some tough but fair-minded means of dealing with the flood of printed and filmed material that abuses the young and assaults our privacy.

There is, rather suddenly, a resurgence of interest in the legal field that goes by the name "obscenity." Not that it ever lacked for interest. The conjunction of sex and politics is irresistible. But now there is more than interest; there is consternation—on the part of those who fear for our morality, on the part of those who fear the First Amendment will founder on the convictions of Harry Reems and Larry Flynt.

I suggest we abandon the word obscenity. I do not mean that the law should ignore all the many and varied things that legislatures and courts have tried to deal with under this rubric. My suggestion rather is that we drop the word and turn our attention to the social interests actually involved. Then, perhaps, some sensible law-making and law enforcement will follow.

The law is a verbal art. It depends for its effectiveness on compact, muscular words; overgrown, flabby words are useless in the law, worse than useless—confusing, damaging. "Obscene" as a description of the morally outrageous or the intellectually monstrous continues to be useless (and generally has little to do with sex). "Obscene" for legal purposes should be discarded altogether. It carries an impossible burden of passionate conviction from both sides of the question. And it diverts attention from real issues. The present litigation over what is called obscenity involves serious public concerns which the word obscures and distorts.

Draw back a bit. Exactly eleven years ago a battle against literary censorship came to a close. What had been censored, for three hundred years, was called, in law, obscenity. Obscenity in its traditional sense—impermissible writing about sex, impermissible either because of what it described or because of the words that were used—was at an end. Writers would be able to write as they pleased on the subject of sex, and use whatever language they thought best. They would no longer have to keep a mind's eye on the censor, they could pay full attention to their art and ideas. The field of legal struggle would move to other forms of expression—films, the stage, television, photography.

So much has changed in the last eleven years that one who had not lived through earlier times would find the freedom that writers now enjoy unremarkable. Yet in the few decades just then ended, such works as Dreiser's An American Tragedy, Lillian Smith's Strange Fruit, and Edmund Wilson's Memoirs of Hecate County had been the subjects of successful criminal prosecution. Recently, in contrast, there has been no suppression of books at all. Obscenity prosecutions are now directed at motion pictures and stage performances and magazines (the last not for their words but for their pictures).

The contest concluded in 1966 was essentially between accepted sexual morality (which sought to govern what was expressed as well as what was done) and the guaranties of the First Amendment. The books declared obscene had been attacked and suppressed for a double reason: because, in the view of the ruling group, they induced immoral behavior, and because their open publication was immoral in itself. The very first brief in the very first case of the series that changed the law—the trial of Lady Chatterley—put the question this way: "Should the courts chain creative minds to the dead center of convention at a given moment in time?" Conventional sexual morality was what was meant and understood.

THE CONTROL OF CONDUCT HAS NEVER BEEN RESTRICTED BY THE FIRST AMENDMENT

Whether or not you agree with the view of those who sought to preserve morality by limiting speech and writing, obscenity as a legal concept was a fair description of what they objected to. It had been attacked as indefinable, but it was no harder to define, no vaguer, perhaps less vague, than other concepts the law engages every day—"the reasonable person," for example, or "good faith," not to mention "fair trial." Its scope had varied over the years, but that is true of all legal concepts. The important point for present purposes is that however uncertain its boundaries, the legal term "obscenity" served a specific social goal.

The real difficulty—which had not been suggested as a difficulty until the twentieth century was well under way—was that the pursuit of the goal might run afoul of the First Amendment. Among the things settled in the series of cases that culminated in the *Fanny Hill* decision was that the attempt to enforce these moral standards through anti-obscenity laws must yield to the Amendment.

The First Amendment protects speech and press. Not all speech and press; there are some exceptions—information helpful to an enemy in wartime, for example, or fraudulent statements to induce the purchase of stocks and bonds. (And even speech and press protected by the First Amendment remain subject to some regulation. You may not, without municipal permission, choose to hold a meeting in the middle of a busy street and proclaim your thoughts while traffic waits.) But obscenity is no longer and exception to freedom of speech and press in the traditional meaning of those terms. And it ought not be an exception for speech and press more broadly defined—communication in general.

"Suppress," however, means throttle altogether. Even the liberal justices of the present Supreme Court, the dissenters from the Burger view, have allowed that expression can be in certain ways restricted. That is, the citizen who has something he wishes to communicate may not be silenced completely—he can be as obscene about it as he likes—but the flow of his expression can be channeled. These liberal justices have said that the First Amendment is not infringed by anti-obscenity laws that seek to safeguard children or to prevent the infliction of unwanted displays on a captive audience.

Another limitation on expression occurs when expression is mixed with action. Consider the poor soul arrested for indecent exposure. No doubt he has something to communicate, if it is only "look at me," but what he does is also an act, and there is no possiblity the Supreme Court would preclude the prosecution of the flasher on the theory that he is only invoking First Amendment rights.

The most libertarian of our justices, Hugo Black and William Douglas, carved out and set aside "action brigaded with expression." Even while they were advancing their thesis that the First Amendment must be given an "absolute" construction—that speech and the press must be subject to no restraint whatever—they said that when behavior was involved, a different question was presented. The situation must be analyzed to determine which element action or expression, can be said to dominate. The control of conduct has never been restricted by the First Amendment. Indeed, the control of conduct is the primary business of government. The prosecution of Harry Reems, actor in *Deep Throat*, poses an interesting problem. The film was made in Florida, where the actors performed their acts; Reems was prosecuted in Tennessee, a place where the film was shown. Behavior more than expression? In Florida maybe, it seems to me; in Tennessee, no.

It is in these three fields that legitimate problems remain—the protection of children, the unwilling, audience and action mixed with expression. In each instance, however, we would do better to use legal concepts other than obscenity.

When we are dealing with behavior rather than expression, the only question is what kind of behavior we ought to regulate—whether, for instance, any kind of private sex between (or among) consenting adults should be prohibited. The answer does not involve the First Amendment. Laws controlling conduct rather than communication, as we have seen, do not infringe freedom of speech or press.

The most prominent current topic on which this distinction may help arises from municipal efforts to deal with the ugly sore of commercial sex—Boston's delimitation of its "Combat Zone," Detroit's recently upheld dispersal ordinance, New York's attempt to restore the center of Manhattan to something like what it used to be Prostitution, with its corollary crimes, is present. So are pornographic book stores. So are hard-core films. We tend to treat them as though they all present a single legal problem. They do not. Prostitution is behavior, not expression. Whether it should be licensed, or simply decriminalized, or continue to be prosecuted, is a troubling question, but it has nothing to do with the First Amendment. Prostitution is clearly on the conduct side of the conduct–expression divide.

But films and books and magazines are on the other side, and there the other concepts enter, and another distinction. We must distinguish between the willing audience and the captive audience. You can say or write or show what you please, but only to those who are willing to listen, or read, or view. *Tropic of Cancer* printed in volume form is one thing: *Tropic of Cancer* blared out by bullhorn in a public square is quite another. The right to express oneself is not the right to intrude expression on those who do not want it.

WE MUST DISTINGUISH BETWEEN THE WILLING AUDIENCE AND THE CAPTIVE AUDIENCE

Privacy has been recognized as a constitutional right. It is actually a cluster of rights, one of which is the right to be let alone. Exhibition inside theaters is in this sense private; on one is compelled to enter. The same for books and magazines; on one is forced to read them. But once the stuff spills onto the streets—on theater marquees or posters, in storefront windows or newsstand displays—the privacy of those outside is assaulted. The liberty of those who like pornography is not inconsistent with the liberty of those who don't. Neither should be constrained by law—the one denied the means of gratify his voyeurism, the other forced to share it. If the people wish to forbid public exhibition of certain kinds—exhibition which dismays some of those who are trying to enjoy their clear right to use the streets and sidewalks free of assault—there is no First Amendment reason that ought to stand in the way. It need not be labeled obscenity. What is thrust upon the passerby can be regulated because the citizens feel it is disagreeable of offensive or unhealthy—that is, if there are enough such citizens so that under our democratic processes they constitute a majority.

Privacy is the modern idea that inheres in this situation. An ancient legal idea reinforces it. It is the traditional and useful and sensible idea of nuisance. In New York, 42nd Street constitutes a public nuisance. No need to cogitate and strain over whether the displays are obscene. Let the movies be shown in the theaters, but restrict, if the voters wish, what appears on their marquees. Let the magazines be sold—let the pimps to masturbators think of themselves as publishers—but keep their product off the front of newsstands.[1]

Finally, child abuse. Although there is disagreement about how their cultural environment affects the emotional development of children, there is consensus that the environment is a powerful factor. (If the reader of this piece has a liberal bent, it may help his thinking on the subject to concentrate not on sex but on violence.) A legislative effort to shield the child from certain representations of sex (or violence) does not, in the view of the justices most concerned with freedom, infringe the First Amendment. Nor does the legislature have to prove that ill effects inevitably flow from what it prohibits. Since the First Amendment is not involved, the only constitutional inhibition is the due process clause, and there the test is not whether the legislature is absolutely right, or even sure of the efficacy of its statute. The test is whether there is a rational basis for its concern, and whether what it tries to do about it is not altogether foolish. The established constitutional formula for testing legislation against the due process clause is that it not be "arbitrarly and unreasonable."

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[1] These paragraphs may raise two questions in the reader's mind. I have stressed in other writings that the safeguards of the First Amendment are designed for minority views: there would be no need for the amendment if all we wanted to protect was what the majority deemed acceptable. Hence the references above to "a majortiy" and to "what the people wish" may seem, if one reads too quickly, rather odd. The answer is that these paragraphs deal with situations to which, if the prescription is followed, the First Amendment does not extend. And I am referring to the kind of things at which anti-obscenity laws are aimed, not to political speech.

The second question is, How do you do it? How do you provide for the permission to publish and the prohibition of display—the permission to exhibit in closed theaters and the control of what is out on the street? Fifty difficult hypotheticals can be rattled off in fifty minutes. But this is true of almost any statutory regulation. Laws are hard to apply and enforce: this does not mean we should not have them. When, for instance, does merger become monopoly? When does an efficient business arrangement become restraint of trade? The fact that these are large perplexing questions, which spawn thousands of more perplexing little questions, does not mean we ought not have our antitrust laws. To deal with all the legal questions my proposals might bring in their train would require a legal treatise. This short piece is necessarily elliptical and I am not trying to draft the statutes. But I believe such statutes can be drawn, and enforced with fair success.

PRIVACY IS A CLUSTER OF RIGHTS, ONE OF WHICH IS THE RIGHT TO BE LEFT ALONE

It is not arbitrary or unreasonable for the legislature to conclude that inducing children to engage in sexual activity can harm them. Nor is it arbitrary or unreasonable to prohibit the photographing of children who have been induced to do so, or to interdict the publication and sale or magazines in which the photographs appear. The publisher and the seller are principals in the abuse. Without them, it would not occur.

There is also abuse of children in another situation—where the child is audience rather than subject. Here television is the prime subject of concern; children are overexposed to what comes through the tube. It will not do to say the family should exercise control. Pious introductions warning of "mature theme" and advice to exercise "parental guidance" are stupid, unless they are cleverly meant to be self-defeating, and in either event they are revolting. If the children are not watching, the caveat has no purpose; if the children are watching, the caveat is a lure. This is obscenity in its larger, nonlegal sense.

Our habits have come to the point where the family in the home is the captive audience par excellence. Neither the child's own judgment nor, as a practical matter, the authority of parents can make effective choices. A legislative attempt to control the content of television programs that had a reasonable basis in the aim to safeguard children would not violate the Constitution.

Our most liberal justices have pointed out that the world of the child is not the world of the adult, and efforts to limit expression have a special place where children are concerned. (Broadcasters who resist control are making a claim to be free in the sense the right wing often uses—freedom to exploit monopolies.) Here again the standard is not obscenity.

Apart from these three fields, the First Amendment demands that we must put up with a lot of what is disagreeable or even damaging. The point made by feminists—that porno films and magazines demean and exploit women—is a strong one. (It is even stronger than they think: the things they object to demean and exploit all people.) But the First Amendment, I believe, requires that we let the material be produced and published. So long as expression is involved and intrusion is not, and there is no question of child abuse, our arguments should be addressed not to the courts but to the producers and sellers of entertainment. That is not an entirely futile effort. The public can be affected by these arguments, and it is the public after all that makes the selling of entertainment a profitable venture. To the extent that these arguments do not prevail, we must accept the fact that the freedom guaranteed by the First Amendment are costly freedoms. Very costly. Worth the cost, I would say.

The First Amendment has lately had to contend with more than its old enemies. The effectiveness of any law—including our fundamental law, the Constitution—depends on the people's perception of it. The prime example of a law destroyed because too many saw it as fatuous was Prohibition. Freedom of the press has trouble enough as an operating concept—as distinguished from an incantation—without having to defend itself from those who like to call themselves its friends.

The voguish furor about anti-obscenity laws diminishes the public perception of the First Amendment in two ways. One is the silliness—calculated or naive—of so many who rush to grab and wave the First Amendment banner. Lawyers defend topless bars with phrases out of *Areopagitica*. Blind to the fact that all constitutional law is a matter of degree, an actor solemnly proclaims: "Today Harry Reems, tomorrow Helen Hayes." Fatheadedness rarely helps a cause.

The other source of deliberation is a sort of constitutional imperialism. Freedom of expression is not our only liberty. It is, to my mind, our most important liberty, the basis of all others. But it is part of an entire structure. It is entitled to no imperium; it must democratically live with other guaranties and rights.

The First Amendment has serious work to do. Invoked too often and too broadly, it can grow thin and feeble. The restrictions I suggest are minimal, and specific, and—with the anachronistic concept of obscenity discarded—they allow more freedom than the courts have granted up to now. And, I think, they may help to avoid a dangerous dilution of First Amendment guaranties.

POSTSCRIPT

People to whom I have broached the idea submitted in this essay have asked about its evolution. What goes on in the mind of a lawyer who once attacked obscenity laws so hard and now suggests legal restrictions on some of the things that are commonly called "obscene"?

A novelist, speaking from the feminist side, reads me an essay she is doing. It mentions "Charles Rembar, the attorney who escorted Lady Chatterley and Fanny Hill to their triumphant American debuts, thereby unwittingly spreading his cloak—and ours—in the muddy path for a pack of porno hustlers." Not *unwittingly*, I say, and then I quote from *The End of Obscenity:*

The current uses of the new freedom are not all to the good. There is an acne on our culture. Books enter the best-seller lists distinguished only by the fact that once they would have put their publishers in jail. Advertising plays upon concupiscence in ways that range from foolish to fraudulent. Theater marquees promise surrogate thrills, and the movies themselves, even some of the good ones, include "daring" scenes— "dare" is a child's word—that have no meaning except at the box office. Television commercials peddle sex with an idiot slyness.

Among the lesser detriments of the new freedom is the deterioration of the television situation comedy, an art form that has not been altogether bad and has had, indeed, high moments. It suffers now from a blue-brown flood of double-meaning jokes, stupidities accompanied by high cackles from the studio audience. (How do they gather those people? Or is it only a Moog synthesizer?) On the other hand, among the most important benefits are the intelligent discussions, on television, of subjects that could not be publicly discussed before; it is difficult to remember, but a documentary on birth control could not have been aired some years ago. Also, just possibly, a new and wonderful trend in journalism: It may no longer be feasible to sustain a bad newspaper by loading it with leers; since sex stories are much less shocking today, the old circulation formula may be hard to work.

LET THE MOVIES BE SHOWN IN THE THEATERS, BUT RESTRICT, IF THE VOTERS WISH, WHAT APPEARS ON THEIR MARQUEES

Do the suggestions I make jeopardize the freedom won eleven years ago? I think not. In fact, in terms of what may be suppressed, they expand it. The freedom was won for the printed word; for other forms of expression, the decisions carried implications of greater liberty than had theretofore been enjoyed, though not as complete as writers would enjoy. In arguing the cases, I said that not all media were the same, and called attention to the points that underlie the approach outlined above—the protection of children, the problem of action mixed with expression, and one's right not to be compelled to constitute an audience. (Don't pluck my sleeve as I am passing by, stop poking your finger on my chest; freedom includes freedom from your assailing my senses—these are fair demands that books don't interfere with.)

All that is new in my position is the proposal that we come to the end of obscenity in another sense and turn our attention to the things society may rightfully care about.

The proposal is made with the thought that it can make the First Amendment stronger.

[From the State Government News, June 1977]

Child Porn

The multibillion dollar pornography industry has taken on a new form, widely available at the many thousands of porn shops across the country. It features children, even as young as three years old, in sexually explicit films and magazines.

A recent estimate puts the number of these magazines at 264, a large number of them produced in the United States.

The children are not difficult to recruit, according in Dr. Judianne Densen-Gerber, a New York psychiatrist and president of Odyssey Institute, an organization which deals with the sexual, emotional and physical abuse of children. Magazine and film producers simply use their own children or draw from the more than 1,000,000 American runaways each year.

"They may be induced to pose for $5 or a trip to Disneyland or even a kind word," Dr. Densen-Gerber says.

Dr. Densen-Gerber adds that posing for these pornographic films and magazines is "highly destructive to children. It leads them to join our deviant populations: drug addicts, prostitutes, criminals and preadult parents."

Many of the children are victims of more brutal crimes. Los Angeles Police Investigator Jackie Howell states that, "We have found that a child molester is often also the photographer. Photography is only a part of it, a sideline more often than not to prostitution, sexual abuse, and drugs."

OBSCENITY OR CHILD ABUSE?

It has been extremely difficult to prosecute these cases because the films are made in secret, generally with the complicity of parents or guardians. Also, federal and state statutes have not, for the most part, dealt with children as a separate problem and are therefore included in the same ambiguous obscenity statutes as adults.

At the present time 47 states have statutes regulating the distribution of obscene material to minors. However, only six states have statutes on the books which specifically prohibit the use of children in an obscene performance which would be harmful to them. These states are Connecticut, North Carolina, North Dakota, Rhode Island, South Carolina, and Tennessee.

The Connecticut statute (Conn. G.S.A. § 53-25) specifically prohibits the procurement, use, employment, or exhibition of a child under 16 years of age for any obscene, indecent or immoral purpose. Violators are fined up to $250 or imprisoned less than one year or both.

In North Carolina (N.C.G.S. § 14-190.1 *et seq.*) it is a misdemeanor to hire, employ, or use a minor under 16 in photographs for preparation of an obscene film or photograph for the purpose of distribution for sale. Punishment is set at the discretion of the court.

It is a felony in North Dakota (N.D.C.C. § 12.1-27.1-03) to permit a minor to participate in an obscene performance which would be harmful to him.

The most recently passed legislation on the child pornography issue was by Rhode Island on May 10 (R.I.P.L., Ch. 131). The statute sets penalties for exploiting children in sex films or photographs (first offense—imprisonment of not more than 1 year or a fine of not more than $1,000 or both; second offense—not more than 3 years imprisonment or a fine of not more than $3,000 or both; subsequent offenses—not more than 5 years imprisonment or a fine of not more than $5,000 or both).

The South Carolina statute (S.C. Code § 16-414.1 *et seq.*) says that it is unlawful to knowingly hire, employ or use a minor to prepare, publish, print or distribute any obscene material. Violations carry a penalty of imprisonment of up to 2 years and a fine not exceeding $1,000 or both.

In Tennessee (Tenn. C.A. § 39-3013) it is unlawful to knowingly hire, employ or use a minor under 18 years old to take part in an obscene theatrical production or live performance. Penalties call for a $250-$5,000 fine or not more than one year imprisonment or both. Subsequent violations are a felony and fines are $500-$10,000 or imprisonment of 2-5 years.

Recently, however, a number of state legislators have introduced bills designed to crack down on the use of children in sexually explicit scenes in films and magazines.

The general trend in the new legislation is to prevent child pornography statutes from becoming bogged down in First Amendment obscenity problems and, instead, to tie the issue to the category of child abuse for the purpose of invoking child protection laws.

BILLS INTRODUCED

HB 286 has passed the House in Illinois and has been introduced in the Senate. The bill defines the offense of obscenity involving a minor, makes violations a felony, and prescribes a fine of up to $25,000 for a first offense. A second or subsequent offense includes a fine of up to $50,000.

Illinois Governor James R. Thompson has announced that a task force will be formed to investigate reports of child abuse and child pornography in state institutions.

Bills have been introduced in the California Legislature (SB 428 and AB 702) to prohibit the employment of any person under 18 from engaging in sexual activities for commercial purposes. Violations are punishable by not more than one year in prison.

Another California bill (SB 740) would prohibit the same things but would make violations a felony with prison sentences depending on the age of the child involved (7 years old or younger—50 years in the state prison; 8 to 12 years old—25 years in prison; and 13 to 17 years old—10 years imprisonment).

In Pennsylvania, an amendment to an obscenity statute (HB 70) dealing with child pornography has been favorably reported out of the House Judiciary Committee. The amendment makes it a felony to permit a child under 16 to engage in a sexual act, to photograph or sketch the child or to transport or mail material that contains depictions of the act.

A Pennsylvania bill designed to separate child pornography from the problems surrounding adult pornography has also been introduced. It would prohibit the sale of publications, pictures and films that depict children under 16 performing sexual acts. In addition, it prohibits photographing or knowingly permitting children to engage in these activities. The bill does not attempt to define what is obscene.

Two nearly identical bills have been introduced in the Michigan House and Senate to stop the exploitation of children for pornographic purposes by parents or guardians, producers, financiers, distributors or sellers of a sexually explicit film, magazine or picture. In HB 4332 the definition of a child is a person below 17 years of age and in SB 381 the age of a child is defined as below 18 years of age. The bills also state that anyone depicted as a minor is presumed to be a minor.

Legislation has been introduced in the Ohio Senate to clarify the law on child pornography. The bill prohibits the sale and distribution of sexual material involving children and increases the maximum penalty to a five year prison sentence and a $25,000 fine for first offenders and a $50,000 fine for repeat offenders.

Several New York bills have been introduced (SB 2649, SB 2729, SB 2743, AB 3587, AB 3601) which make it a felony to permit a child to perform in an obscene performance, to use minors in the production of an obscene performance, or to profit from the sale of pornographic materials that use minors.

FEDERAL PROPOSAL

Bills have been introduced in the U.S. House of Representatives by Rep. John Murtha of Pennsylvania, Rep. Dale Kildee of Michigan and Rep. John Murphy of New York to prohibit sexual exploitation of children and transportation of photographs or films in interstate or foreign commerce depicting the sexual exploitation.

The Odyssey Institute has prepared a state model statute which defines a minor as a person under 18 years of age. The statute makes it a crime for a person to knowingly promote, employ, use or permit a minor to engage in any sexual performance for purposes of preparing a film, photograph, or motion picture which is obscene.

The Odyssey Institute has also prepared a federal statute model. By Linda Bailey, CSG, Lexington.

APPENDIX D

D—SELECTED NEWSPAPER REPORTS OF INCIDENTS OF SEXUAL ABUSE OF CHILDREN

D—1 Child's Garden of Perversity, Time, April 4, 1977.

D—2 Child Porn: Is the Issue 1st Amendment Freedom, the Washington Star, April 11, 1977.

D—3 Child Pornography. Sickness for Sale, Chicago Tribune, May 15, 1977.

D—4 U.S. Orders Hearings on Child Pornography, Chicago Tribune, May 13, 1977.

D—5 Child Sex: Square Block in New Town Tells it All, Chicago Tribune, May 16, 1977.

D—6 Chicago is Center of National Child Pornography Ring, Chicago Tribune, May 16, 1977.

D—7 Hunt 6 Men, 20 Boys in Crackdown, Chicago Tribune, May 16, 1977.

D—8 How Ruses Lure Victims to Child Pornographers, Chicago Tribune, May 17, 1977.

D—9 Dentist Seized in Child Sex Raid: Carey to Open Probe, Chicago Tribune, May 17, 1977.

D—10 Boys Farm Scandal, the Washington Post, June 5, 1977.

CHILD'S GARDEN OF PERVERSITY

Lollitots magazine is one of the milder examples. It features preteen girls showing off their genitals in the gynecological style popularized by *Penthouse* and *Playboy*. Other periodicals, with names such as *Naughty Horny Imps*, *Children-Love* and *Child Discipline*, portray moppets in sex acts with adults or other kids. The films are even raunchier. An 8-mm. movie shows a ten-year-old girl and her eight-year-old brother in fellatio and intercourse. In another film, members of a bike gang break into a church during a First Communion service and rape six little girls.

These and a host of other equally shocking products are becoming increasingly common fare at porn shops and sex-oriented mail-order houses across the nation. They are part of the newest growth area pushed by the booming, billion-dollar pornography industry: child porn.

"I just found out about these magazines and films this summer, and I've become a raving banshee over it," says Dr. Judianne Densen-Gerber, a Manhattan psychiatrist who has been barnstorming around the country in a crusade against this abuse of minors. Her effort is only one part of a new campaign against child porn. New York City has cracked down, and police have at least temporarily forced kiddy-sex periodicals and films out of the tawdry Times Square area. Some twenty states are considering child-porn laws. Last week the Illinois house of representatives approved a bill setting stiff penalties for producing and selling child porn. The bill is expected to pass the senate and become state law.

Child porn is hardly new, but according to police in Los Angeles, New York and Chicago, sales began to surge a year or two ago and are still climbing. Years ago much child pornography was fake—young-looking women dressed as Lolitas. Now the use of real children is startlingly common. Cook County State's Attorney Bernard Carey says porno pictures of children as young as five and six are now generally available throughout Chicago. Adds Richard Kopeikin, a state's attorney investigator: "They are even spreading to the suburbs, where they are now considered rare items, delicacies."

Among recent developments:

Underground sex magazines are heavily stressing incest and pedophilia. One current West Coast periodical ran ten pages of photos, cartoons and articles on sex with children.

In San Francisco hard-core child-porn films were shown in a moviehouse for five weeks before police seized the films last February. Even San Francisco's Mitchell brothers, the national porn-film kings, were outraged. Says Brother Jimmy: "We think obscenity laws should start with child porn."

An Episcopal priest, the Rev. Claudius I. Vermilye Jr., who ran a farm for wayward teens in Winchester, Tenn., is awaiting trial on charges that he staged homosexual orgies with boys on the farm and mailed pictures of activities to donors around the country.

Until recently, much child porn sold in America was smuggle[illegible] from abroad. Now most of it appears to be home grown, with the steady str[illegible] of bewildered, broke runaways serving as a ready pool of "acting talent" for photographers. Pornographers who stalk children at big-city bus stations find many victims eager to pose for $5 or $10—or simply for a meal and a friendly word. Says Lloyd Martin, head of the Los Angeles police department's sexually abused child unit: "Sometimes for the price of an ice-cream cone a kid of eight will pose for a producer. He usually trusts the guy because he's getting from him what he can't get from his parents—love." In many cases, the porn is a byproduct of child prostitution. Pimps invite children to parties, photograph them in sex acts, and circulate the pictures as advertisements to men seeking young sex partners. Frequently, the pictures are then sold to porn magazines.

Even worse, some parents are volunteering their own children to pornographers, or producing the sex pictures themselves. Last year a Rockford, Ill., social worker was sent to jail for allowing his three foster sons to perform sex acts before a camera for $150 each. In January, a couple in Security, Colo., was charged with selling their twelve-year-old son for sexual purposes to a Texas man for $3,000.

Some children in porn photos are victims of incest. Parents will have intercourse with a son or daughter, then swap pictures with other incestuous parents, or send the photos to a sex publisher. Sex periodicals, particularly on the West Coast, publish graphic letters on parents' sexual exploits with their own children. Says Los Angeles' Martin: "We had one kid in here the other day who is eleven years old. His father started on him when he was six, then sold him twice as a sex slave. The kid had been in movies, pictures, magazines and swap clubs. After a while, he broke down and cried and said how grateful he was to have been pulled out of it."

Such experiences can of course scar a child for life. Warns New York Psychoanalyst Herbert Freudenberger: "Children who pose for pictures begin to see themselves as objects to be sold. They cut off their feelings of affection, finally responding like objects rather than people." Some psychistrists believe that children who pose in porn pictures are often unable to find sexual fulfillment as adults. Another danger, says Los Angeles Psychiatrist Roland Summit, "is that sexually abused children may become sexually abusing adults."

Child porn poses fewer hazards for the pornographers. Producers of child porn can be prosecuted for sexual abuse of children, but the children are hard to identify and locate. So are the producers, who often hide behind a welter of dummy corporations. Thus most prosecutions are under the obscenity laws, which generally make no distinction between children and adults as porn models One result: many lawyers believe that the genital pictures in Lollitots, however offensive, might be judged no more obscene under the law than similar photos of adult women routinely published in most men's magazines.

To make prosecutions easier, angry legislators in several states and Congress are proposing a kind of end run around the obscenity laws—a ban on sexually explicit pictures of children, whether legally obscene or not. One bill introduced into the House of Representatives by Democrats John Murphy of New York and Dale Kildee of Michigan already has 103 co-sponsors. It would make any proven involvement with the production and sale of explicit sex pictures of children a felony. Says a Kildee aide: "Our bill is clearly enough directed toward child abuse so that the First Amendment should not arise. This is why we defined child pornography as a form of abuse, rather than a form of obscenity."

Under this approach, a salesman in an adult bookstore could be prosecuted as an active participant in the crime of sexually exploiting the children pictured in the store's magazines. New York Lawyer Charles Rembar, who successfully defended Lady Chatterley Lover and Fanny Hill against obscenity charges, thinks the seller of child porn is a suitable target: "It is totally unrealistic to say that the people who sell these magazines and films are not involved in the act themselves." Yet other lawyers consider a broad child-abuse law a form of backdoor censorship. Says Ira Glasser of the New York Civil Liberties Union: "I assume if you put your mind to it, you could come up with an acceptable statute prohibiting adults from using children in explicit sex films and photos, but controlling what people see or read is another matter. Everything published ought to be absolutely protected by the First Amendment."

Despite First Amendment problems, public pressure for some kind of law is likely to grow. Many Americans battling aaginst child porn view their efforts as a last stand against the tide of pornography. Says California State Senator Newton Russell: "This is a reflection of the social and spiritual morality of this nation. If there is to be any reversal in the trend, the place to start is child porn."

Child Porn: Is the Issue 1st Amendment Freedom?

THEY'LL DO ANYTHING TO MAKE THAT ALMIGHTY BUCK

An estimated $1 billion-a-year industry that has thrived by creating new fads and demands, each more explicit and perverse than the last, pronography has now reached what many consider to be its absolute limit—the use and abuse of young children.

Unfettered by regulation, pornography has grown more varied and efforts to control it have failed. That is due to confusing obscenity statutes and to the fight by such groups as the American Civil Liberties Union (ACLU) which believe censorship of such material violates the 1st Amendment protecting free speech.

Now, with children being filmed and photographed in hardcore sex acts, a wide range of individuals and agencies is beginning to organize and fight the trend.

Several States have hurriedly introduced legislation aimed at banning child pornography. None has yet been passed. One bill has been introduced in Congress and a second is being drafted.

For law enforcement officials who have grown largely ambivalent about porn prosecution, and for liberals who abhor censorship in any form, the issue of child pornography teeters on the cutting edge of the 1st Amendment, a litmus test of what is or isn't truly obscene.

"Just a few years ago, it was straight sex between couples," said Robert Kendall, a Justice Department attorney specializing in obscenity prosecution. "Then we escalated to explicit ejaculation, then groups of three and four people, then bisexuality, S&M, bestiality, urination and defecation, then snuff.

"Now, we're going through a very bad stage. Children. In order for pornography to survive, there must be a new product. They'll do anything to make that almighty buck."

While public and judicial attention—and outrage—have largely been focused on such highly visible and well publicized smut vehicles as the movie "Deep Throat" and the magazine Hustler, child porn in the past year or so has moved into the adult bookstores and porno mail order houses largely unmolested by the law. Today, it accounts for as much as 10 percent of the market by some informed estimates.

It has done so largely because of public ignorance, and the fact that obscenity laws, a gray area at the best of times, make no distinction between kidporn or any other kind.

"The average person has no idea of what's on sale in porno shops because they never go in them" said the LAPD's Martin.

"It's such a distasteful subject that the news media generally doesn't want to touch it. We believe child porn alone is a multimillion-dollar portion of the industry and it's getting bigger. This isn't consenting adults. These are confused, frightened children. To me the crime has no equal."

Dr. Judianne Densen-Gerber, a New York psychiatrist, lawyer and social activist, has been touring the United States recently, shocking community groups by screening a child porn film and displaying hardcore magazine examples of the trend.

The 1st Amendment dilemma was put to Alan Reitman, associate director of the American Civil Liberties Union, which recently felt obliged to publish a position paper on its attitude toward child pornography.

An ACLU committee studied the question, viewed examples of kidporn and decided that while it is all right for authorities to prosecute those producing the material, the ACLU does not support prosecution of porn distributors and adult bookstores selling it.

"There is an important principle of free communication," argued Reitman, emphasizing that he personally found the material repugnant. "If you start making distinctions (between degrees of pornography), you weaken the principle and open the door to further censorship."

Asked about the contention that it is extremely difficult to track down the producers of this material, and that police are generally forced to concentrate on the national distributors and adult bookshop owners, Reitman said:

"Then the police will just have to try harder."

Authorities around the country contacted by The Washington Star said that at virtually any big city city adult bookshop, and probably all porn mail order houses, one can view peepshow films or buy books and movies involving children as young as four or five. Police raids tend to push the stuff temporarily beneath the counter, but it quickly reappears when the heat is off.

New York Dist. Atty. Robert Morgenthau last week assured a visiting reporter that Times Square, following a series of police raids, had cleaned its shops of child porn. Morgenthau was wrong: Three of the area's dozens of porn shops were visited randomly and each had a selection of hardcore peepshows and movies, along with books involving children.

In the District, one of the few jurisdictions with a law explicitly covering the "lewd exhibition" of children's genitals, both the Justice Department's Kendall and a D.C. police spokesman were equally confident that child pornography wasn't being sold in the capital. A quick survey of 14th street NW turned up child porn books and movies.

Elsewhere, the story is much the same. "It's wide open," complained Nick Ivarone of the Chicago police department. "I've got stuff purchased in this city involving little boys and girls that would make you sick."

Said Robert Leonard of Flint, Mich., president-elect of the National District Attorneys' Association (NDAA): "You can't believe this thing. It's fantastic. We've just formed a special nationwide task force of district attorneys to try and come to grips with it and our preliminary survey shows that it seems to be just about everywhere. I believe prosecution of pornography ought to have a low, if any, priority. But this stuff is a whole different ball game."

Not surprisingly, child porn emulates adult fare, from simple nudity to extreme perversion, with bestiality apparently the only area yet to be exploited.

Magazines such as Lollitos, Nature Boys, and Moppets and Teens purport to be of "cultural, scientific, educational and sociological" value. Prepubescent and early teen-age girls and boys are photographed in awkward poses designed for maximum exposure of the genitals . . . all under the guise of being sexually healthy nudist-type publications.

Others, such as Naughty Horny Imps, Children Love, Chicken Hawks and Pre-Teens and Older Men, along with movies with similarly suggestive titles, make no such pretense. They show explicit sex acts between young children of both sexes, and between children and adults, both homosexual and "straight."

The combinations and the activities seem limited only by the pornographer's imagination and the limits to which he, or she, are willing to exploit the children. The kids themselves often seem confused, and in the movies, can sometimes be seen looking off camera, waiting for instructions on how to proceed.

Amazingly, even these items do not push the new outer limits of porn. Two books obtained by Densen-Gerber are virtual primers for incest and pedophilia, actually encouraging it.

One book contains full color photographs of a girl about seven or eight and a man represented as her father. An accompanying pseudo-sociological text extols the joys and virtues of incest "in this enlightened age" with detailed instructions on the physical techniques required to accomplish it. The child's bewildered expression throughout the magazine speaks volumes in support of Denser-Gerber's campaign.

The other publication is simply titled "Lust For Children" and chronicles, in graphic, full-page drawings and text, the adventures of a child molester who spots two young girls in a park. Written and drawn entirely from the man's point of view, it details how he buys them ice cream, lures them to his house, plays various games to win their confidence, then sexually abuses them.

One part of the story instructs the reader to ignore any struggle or protest from the children, stating that little girls are naturally promiscuous and such protest really means they are enjoying it. The message throughout is that child molesting (that expression is never employed) is harmless and fun. The book concludes with drawings of two laughing children happily accommodating their new-found "friend" in a variety of sexual activities.

Although none of those campaigning against child porn claim to have seen any definitive cause-and-effect studies, they say common sense indicates that such books as "Lust For Children" can only encourage the activity they portray.

The LAPD's Lloyd Martin agrees. "Every case (of child molesting) we've ever made out here, the guy's had this material," Martin said. "Take one man who picked up a 5-year-old girl in the part. The guy had two briefcases containing 10 rubber dolls, candy, a tube of Vaseline and a stack of books including Lollitots, Moppets and one called Daddy Loves Little Girls."

Author Robin Lloyd says that during his research for his book on boy prostitution, he collected 264 different boy and girl porn magazines being sold in adult bookstores nationwide, some so exclusive that they dealt with such things as homosexual acts between identical twin brothers.

In Los Angeles, where much of this material is thought to be produced, police conducted a study last year and concluded that over 3,000 youngsters under the age of 14 were being exploited sexually in the city.

"Children have become commodities and are bought, sold and traded for the financial gain of the involved adults," the Los Angeles report states. "Every conceivable sexual act is committed upon these young people, including acts of sadomasochism."

Police investigating the problem believe the children used in kidporn come from various sources. The younger ones, particularly girls, are provided by their parents—drug addicts, porn performers themselves, most often parents having incestuous relationships with their children.

The young teens are sometimes runaways or street-wise youngsters lured into the trade. Some are sent by unwitting parents to religious or summer camps run by homosexuals. The children are drawn into the activity, then become too frightened or ashamed to tell their parents. And some children are simply victims.

"We find now that practically all child molesters take polaroid pictures of their victims for their own enjoyment, and for sale," Martin said. "Then a lot of fathers performing incest on their sons or daughters will let them be used in films, or will exchange photographs with others, and these will end up being published."

Last January, a Security, Colo., couple was charged with selling their 12-year-old son for $5,000 for sexual purposes to a Texas man who took the boy to Los Angeles. A social worker in Rockford, Ill., was jailed last year after permitting pornograhper to film his three foster sons. the fee : $150 per child.

Boys and girls from broken and problem homes, runaways or kids allowed to wander without parental supervision are often lured into the trade.

"These kids are easy targets" said Martin. "Their home situation is deplorable. Money doesn't mean much to a lot of these kids. What they crave is love and affection."

Equally depressing is the ultimate effect of this activity on the children themselves. Those studying the problem feel the children will suffer lasting harmful effects and—just like battered children who grow up to beat their own infants—will probably grow up and become sexual abusers themselves.

Said Dr. Vincent Fontana, a child sex abuse expert at New York's Foundling Hospital: "There is a great deal of psychological scarring of these kids, and God only knows where they will end up . . . drug addiction, alcoholism, sexual acting out. As these kids grow up, they're going to have real problems."

Densen-Gerber agreed. "We know psychiatrically how destructive this inappropriate sexuality is to our children. It leads them to join our deviant population of drug addicts, prostitutes, teen-age parents and criminals," she said.

Authorities say that perhaps 70 percent of the child porn market now involves young boys—"chickens" in the vernacular—and adult male homosexuals. A vast and well organized network caters to the "chicken" trade with books, movies and boy prostitutes.

Robert Leonard, the NDAA's president-elect, said investigations into well organized boy prostitution and porn rings are currently under way in Michigan, Louisiana, Tennessee, Pennsylvania, Rhode Island and Virginia.

Several of the rings have operated out of religious-type camps. In Tennessee, the Rev. Claudius Vermilye Jr. an Episcopal priest operating a farm for wayward boys, was charged recently with staging homosexual orgies with the boys and photographing the action for sale to magazines.

Off Traverse city, Mich., a phony religious group set up a camp on North Fox Island in Lake Michigan and flew upwards of 200 boys out to the island for the pleasure of well-heeled homosexuals. In New Orleans, it was a Boy Scout leader staging similar activity with members of his troop.

"On 42nd Street in Times Square and at 53rd and Third Avenue you can watch the hawks waiting to pickup the kids," said Lt. Martin Kennedy of the police public morals division. "You see kids 10, 11 years old. They come downtown from the Bronx to make a buck. These kids take an awful risk—you should see some of the creeps picking them up."

The Los Angeles police study estimated that some 25,000 juveniles under 17 are currently involved in the "chicken" trade in the city. "When we get to them, they usually break down and cry," Martin said. "They are very relieved to be out of it. They often are too scared and ashamed to tell their parents what they've been doing."

There is a distinct sense of anger and frustration among police and prosecutors over the difficulties of prosecuting porn's newest trend. Sexually abusing children is, of course, a very serious crime, but tracking down the offending book and movie producers to press such charges is monumentally difficult.

They point to the obstacles. Pornographers, especially those involved in the seamier aspects such as kidporn, are transient and anonymous. The stuff is quickly produced in private homes or rented motel rooms. Incriminating records aren't kept.

The children have little idea of who is on the other end of the camera, and often it may be their own parents. The distributors operate from a maze of constantly changing phony corporate fronts, with post office box numbers, false names and addresses and the best lawyers money can buy.

A measure of the frustration can be gauged by examining some recent court cases in the obscenity area. Larry Flynt was recently sentenced to serve between 7 and 25 years for publishing Hustler, a magazine specializing in explicit pictures of nude women that in no way approached the fare available in much of the kid-porn literature.

[From the Chicago Tribune, Sunday, May 15, 1977]

Child Pornography: Sickness for Sale

[Exclusive: In the last year and a half, child pornography has become a nationwide multimillion-dollar racket that is luring thousands of juveniles into lives of prostitution. Tribune reporters Michael Sneed and George Bliss spent three months investigating this sexual exploitation of young boys and girls by a national ring of greedy, perverted adults. The series was written by Ray Moseley. This is the first of four articles.]

The smiling, no-longer-innocent faces of little children look up from the pages of more than 260 pornographic magazines sold in America—children engaged in almost every known sexual perversion.

The bok racks in America's smut shops contain volumes that advise child molesters how to pick up children from school playgrounds; tell parents how to have incest with their children; and describe the joys of sexual gratification that come from beating the young.

For sale also are horror movies such as Hollywood never conceived. The horror is in the celluloid portrayal of children from 3 to about 15 years old—some smiling, some bewildered—participating in a variety of sexual perversions with adults and each other.

In Chicago and other cities, adult perverts run boy prostitution rings, luring fuzzy-cheeked youths into street-walking, sending them on cross-country trips to serve a network of customers and selling their young flesh at auction to the highest bidder.

Child pornography and child prostitution, once confined to the darker shadows of American life, have blazed into the open in cities across the country in the last 18 months. They have become highly organized, multimillion-dollar industries, operating on a scale that few Americans have begun to comprehend.

These industries involve films made in private apartments, shipped to Europe, and sent back into the United States on the pretext they are European-made; children lured into sexual misconduct by drugs, alcohol, money, and expensive gifts; and adult exploiters who range from the dregs of society to prominent men, including several millionaires and at least one clergyman.

They involve "adult" bookshops, many controlled by organized crime, that openly sell child pornography or, where they have begun to feel the heat from police, keep it under the counter for sale to regular customers.

Dr. Judianne Densen-Gerber of New York, who heads a national movement to prevent child abuse and neglect, believes the use of children in pornography and prostitution is equivalent to murder.

"They are destroyed by these experiences. They are emotionally and spiritually murdered," she said.

No one knows exactly how many children are involved, but authorative estimates range upward from 100,000.

"We are ruining young lives in record numbers," says Kenneth L. Gillis, deputy state's attorney for Cook County, who has been participating in an investigation started by the state's attorney's office earlier this year.

Why haven't the law-enforcement agencies stamped out the rackets?

A three-month, nationwide investigation by The Chicago Tribune has shown that this is not as easy as it might first appear.

The pornographers, operating out of private residences, have used a maze of post office box addresses, clandestine printing operations and elaborate shipping routes to make detection extremely difficult.

The sale of child pornography went on for months before most agencies even became aware of it, and many have been slow to react. Only four cities—Chicago, Los Angeles, New Orleans, and Houston—have special police units to deal with it.

The Tribune investigation has established that child sex rackets operate on a national and international scale involving thousands of adult perverts often working with one another and exchanging child victims. Among the findings:

Chicago is the headquarters of a nationwide ring trafficking in young boys—"chickens," in the argot of the streets—and placing them in various "homes" to serve male customers, or "chicken hawks." Although federal law makes it a crime to transport a female under 18 years of age across state lines for immoral purposes, there is no such protection for boys. So extensive are these nationwide dealings that The Tribune was able to obtain a list of 5,000 names and addresses of the ring's clients living in every part of the country.

A newsletter for the "boy love" trade is published clandestinely in the Chicago area by a group of men police say includes an employe of a church-run college. The newsletter serves as a nationwide conduit through which pedophiles—adults whose sexual preference is for children—can buy films, contact boys and establish liaison with one another.

In Los Angeles, the leading center of child pornography and prostitution in America, police estimate as many as 30,000 children are involved, including Mexican youngsters smuggled into the country in specially constructed automobiles. Los Angeles police are investigating the murder of several Mexican children to determine if they might have been among the smuggled cargo.

Some children are sold into prostitution and pornography by their parents. Los Angeles police recently found a 3-year-old girl, a 5-year-old girl and a 10-year-old boy, all children of prostitutes, whose mothers had sold them into pornography.

Police who smashed a pornographic film operation in New York last month and seized 4,000 copies of films involving children 8 to 12 years old, said much of the material was destined for buyers in Chicago.

In New Orleans, police say, a group of adult perverts established a Boy Scout troop in 1974 for the purpose of using boys ranging from 11 to 15 years old for homosexual purposes. Nineteen men have been charged with multiple counts of crimes against nature, which carries a maximum penalty of 15 years on each count. Among them are two Boston-area millionaires and a California millionaire alleged to have flown to New Orleans to have sex with the boys. Police investigation of the case extended into 34 states.

An Episcopal priest in Tennessee, the Rev. Claudius I. [Bud] Vermilye Jr., is awaiting trial on charges he took in runaway and neglected children at his Boys Farm, encouraged them to engage in homosexual orgies, secretly filmed the orgies and allowed adult "sponsors" to abuse the boys.

The Tribune investigation disclosed that a half-dozen Illinois men had bought films from the priest. Vermilye was indicted on 16 charges, including 3 counts of crime against nature, 3 counts of aiding and abetting crimes against nature, 4 counts of contributing to the delinquency of minors, and 1 count of using minors in the production of pornographic materials.

Pornographers in at least five states—Michigan, New Jersey, Tennessee, Louisiana, and Florida—have used or have attempted to use federal, state and county funds to establish foster homes and child care camps for their operations, and some have used foster children in pornographic movies. In at least one instance, pornographers obtained a federal income tax exemption for a "church" later identified as a front for their operations.

Although the various pornography and child prostitution operations extend across the nation, police say there is no single organization running them. But the adults involved maintain contact through newsletters and exchanges of children.

"It seems to be like spider webs strung out all over the nation," said Mason Spong, a New Orleans juvenile division detective involved in the investigation of the Boy Scout operation there.

Child pornography as a big business began with the importation of such material from Europe about 18 months ago. The child magazines and films quickly became big sellers in adult bookshops and American pornographers, alert to a good business opportunity, rushed into the market.

The child victims are typically runaways, who come to a city with only enough money to sustain them for two or three days, or boys from broken homes.

Adult exploiters pick up the runaways at bus stations, hamburger stands, and amusement arcades, and offer them money and gifts in exchange for sexual favors. Frequently they show the children pornography to arouse them sexually, and give them drugs and alcohol to lower their inhibitions.

With small children, Los Angeles police say, dolls and candy are used. And in one Chicago case, "the kids were so young that pizza and Coca-Cola were sufficient," said Gillis, the deputy state's attorney.

According to a Los Angeles police report, "Many suspects are wealthy and financially secure men who can afford to give elaborate gifts, including automobiles and motorcycles to their victims."

Experts say many of the children are attracted to adult exploiters because they receive from them something else they never had in the broken homes from which they came—approval and affection.

"A lot of these children are told for the first time that they are worthwhile. Unfortunately, they are not complimented because of good grades or because they are good at basketball, but because they have been sodomized," said Frank Osanka, 41, a sociologist at Lewis University in Glen Ellyn.

Osanka teaches the only course in the United States on child abuse and neglect and numbers several law-enforcement officials among his students.

The costs of sexually exploiting children are minimal and the profits enormous. In Los Angeles, where most of the material is produced, police estimate a pornographic publication that retails for $7.50 to $12.50 per copy can be produced for 35 to 50 cents.

A cheap home-movie camera can be used to produce films that sell thousands of copies for $30 to $50 each.

Children can earn up to $150 a day posing for pictures or movies, and in Los Angeles police found one 12-year-old boy who was making up to $1,000 a day as a prostitute.

Often the money winds up in the hands of pimps, police say, but the pimps spend generously on food, clothing and entertainment for the children.

Stephen F. Hutchinson, legal counsel of Dr. Densen-Gerber's Odyssey Institute, said most child pornographic material now on the market is produced in the United States, shipped to Scandinavia, and then shipped back to America to give the impression it was made in Europe.

"We have evidence of companies producing this filth in Arizona and California and one such operation going 24 hours a day, seven days a week, in New York," he said.

Tennessee police said they have evidence that films taken at the Boys Farm orgies were shipped to Europe and back to the United States.

The pornography business has flourished amid a welter of legal confusion and conflict, with obscenity laws being struck down in some states as unconstitutional and prosecutors groping for other means of attack.

It is extremely difficult to catch pornographers in the act of filming children, because this normally is done in private apartments or homes.

In cases where pornographers are apprehended, their child victims often are unwilling to testify against them, out of loyalty for the favors and attention they have received.

If they are willing to testify, judges and juries sometimes will not believe their stories or will consider them too young to be key witnesses in a criminal prosecution.

Prosecuting the sellers of pornography also presents other problems. Obscenity laws cannot be used in Illinois and other states where they have been declared unconstitutional because of vague terminology, although a number of bills aimed at overcoming these objections are pending in the Illinois legislature.

And when obscenity convictions are obtained, they often are successfully challenged on grounds that any prosecution involving printed or film matter infringes on the rights of free expression guaranteed under the 1st Amendment.

Child abuse laws are a weapon, but in some states law-enforcement officials say they do not provide sufficient penalties. In California, the maximum sentence for child abuse is only two years, and in 40 arrest cases in Los Angeles since September authorities have obtained just one conviction.

Sgt. Lloyd Martin, a Los Angeles policeman who heads a special unit dealing with child abuse, doesn't pretend to have the answer, but he rates child pornography as a crime worse than murder.

"A homicide, once committed, is over," he said in an interview. "But a crime against a child is never over. It has ruined a life."

Psychiatrists and sociologists agree that the social cost from this wholesale exploitation of one of America's most precious resources—its children—may be staggering.

Sexually abused children frequently grow up to enter a life of drugs and prostitution, they say, because they can find no place in normal society.

The experts say premature sex can leave children with genital damage and even lead to cervical cancer in girls. Psychologically, the victims often become prey to grotesque fears and are unable to experience normal sexual fulfillment as adults.

"Intercourse can become painful for them for the rest of their lives," said Dr. Nahman Greenberg, associate professor of psychiatry at the University of Illinois School of Medicine and an expert on child sexual abuse.

Los Angeles police say some sadistic adults torture children who do not follow orders, or threaten to disfigure them.

Robin M. Lloyd, author of "For Money or Love," a study of juvenile male prostitution generally considered the most authoritative work on the subject, suggests that America's children comprise one of the most disadvantaged minorities.

"They are too young to vote; too young to have consumer spending power; too young to have lobbyists speak for them," he said.

What kind of people are the men who exploit them?

"The pedophile is a well-known type," said Dr. Greenberg. "His kind of interest in children is probably extremely narcissistic. He seeks sexual gratification out of a projection of himself.

"He doesn't look for a dirty, scruffy kid. He is usually looking for a very fine, elegant boy, who represents for him the symbol and height of what he would like to have been himself.

"The pedophile believes he is adoring, indulging, gratifying the boy [a theme that runs through "boy love" publications]. He also hates this boy. He envies him, has contempt for him. It's purely jealousy; the boy represents what he would like to have been."

Greenberg said the large market for child pornography does not mean there are more pedophiles today than in past times.

"The market hasn't been present because the law has been more restrictive," he said. "Many people who before were less likely to chance buying it [child pornography] and producing it are now more inclined to.

"It's doing a great disservice. Any civilization to exist has to maintain certain kinds of civilizing behavior and restraint of urges, instinctual trends which may get twisted into areas of perversion."

Tomorrow: Child pornograph and child prostitution in the Chicago area, and the men behind it.

[From the Chicago Tribune, Monday, May 16, 1977]

Child Sex: Square Block in New Town Tells It All

POLICE SPEND LONG NIGHTS WATCHING PARADE PASS BY

(By George Bliss)

At the corner of Clark Street and Diversey Parkway, the teen-age boy prostitutes were making their usual rounds, on the lookout for lone male drivers circling the block.

Police call it Clark and Perversity because of the homosexual activity that goes on in the area.

"You see the cars going 'round and 'round the block all night long," said Officer Joe Bongiorno of the Area 6 youth division as he sat in an unmarked car with engine running at Lehmann Court and Diversey.

"Some of the kids are runaways, but some of them are Chicago boys who come down here just once a month to turn a trick when they need some money. The prices start at $20 and vary, depending on what the boys are asked to do."

The boys hang out at junk food stands on Clark Street and occasionally walk around the block bounded by Clark, Diversey, Lehmann Court and Drummond Place.

The male drivers follow the same circuit, wheeling around the corners one after the other like riders on a carousel.

Bongiorno said most of the youngsters are in the 14 to 19 age group. "When you hit that 19 to 20 mark you're too old," he said.

Night after night for three months, eight men and eight women of the youth division, working in pairs, staked out this square block, gathering evidence for a crackdown on child prostitution.

Chicago Tribune reporters were present during several stages of the police investigation.

This particular night about a month ago, involved several hours of tedious waiting with Bongiorno in the unmarked car, listening as voices occasionally crackled over the police radio.

"That female impersonator has just shown up at the corner of Lehmann and Drummond."

"Here comes that green Pontiac again. Did somebody get the license number?"

But there were few boys on the street, and no pickups.

Precisely at 10 p.m. however, a 1977 yellow Cadillac with white vinyl top turned into Lehmann Court from Diversey.

A 15-year-old boy, walking along Lehmann in white hat and coat, suddenly gestured toward the car and the driver stopped.

Bongiorno tensed in his set and began describing the scene to police in other nearby cars over his radio.

"Oh, that damn squad car is coming out of the alley," he groaned, muttering another expletive, as a cruising district police car happened on the scene.

The boy saw the squad car at the same moment and darted away from the Cadillac. The driver of the Cadillac quickly pulled away.

Minutes later, occupants of another police car saw the Cadillac in a nearby parking lot, then saw it move away.

"I can see only one head in the car," the officer radioed.

"That kid is smart. He's probably lying on the floorboard," Sgt. Ronald Kelly, head of the youth division, radioed back.

The police car followed the Cadillac to an apartment building on Fullerton Avenue took down the license number, and waited.

Fifty minutes later, the Cadillac returned to Clark Street, the boy got out and the car pulled away.

"CHICKEN" MAKES $500 A WEEK, BUT AT 17 HE'S GETTING TOO OLD

(By Michael Sneed)

In the parlance of the street, they are called "chickens" boys who sell their bodies for prostitution and pornography.

One such boy talked to The Tribune about his street hustling career which began when he was 14 years old. Call him Marty.

Several rings adorn his fingers, and he wears a belt buckle that doubles as a weapon. Dressed in well-worn denim, he has no effeminate characteristics.

He had turned a "trick" for $100 the night before and still had $60 in his pocket.

Marty, who recently became 17, turned to prostitution when he moved to Chicago several years ago. The boy who showed him the ropes, he said, was only 13.

"He told me what to say, how to look for 'chicken hawks' adult men and where to go. New Town, that's where the action is. Near the pinball machines, the arcades, certain restaurants, and other places along Clark Street.

"You just hang around and watch who's watching you. It's easy, real easy. The hawks are cruisin' everywhere in cars, walkin' the streets, sittin' in restaurants. It's better than workin'.

"I can make all the money I want. Rates depend on what they want. Some things cost more. Some want you to watch porno movies. Or they give you drugs and booze. Some like to take pictures.

"I once thought about being a mechanic, but man, my mom works for a day labor employment office, eight hours a day for $16. That's work, man, I'm not greedy. I make about $500 a week, tax-free. I could make more. I only do two or three tricks a night.

"I like my life. But I'll be too old soon for this business. Most chicken hawks like 'em real young. They always ask what age you are. The youngest kid I saw hustling was about 11 or 12 years old."

Marty said he spends most of his money on drugs. He's been getting high since he was 13. He says:

"Each day is the same for me. I know that may sound boring, but it's the life I dig. I sleep all day, wake up, make some money, party until daylight, and I'm too high on drugs to walk the streets. Then I go to sleep again. I like it.

"I'm pretty healthy, although I caught VD twice."

Life is a little easier for Marty these days. Now that he's 17, he doesn't have to worry about the 10:30 city curfew, when his younger counterparts must be off the street. It is the one law they obey, in order to avoid police hassles.

He hasn't gone to school since he was 13.

"I never liked school much," he said. "My mom was always after me to go, but she had put me in state institutions for being, ah, ungovernable or something. I never met my father. Never met any relative in my life, except an uncle once. My mom tried getting me a Big Brother, but they never would send me one.

"We came to Chicago 'cuz mom was chasing some old boyfriend, who wound up not caring for her anyway. She's got two boyfriends now. I have a one-year-old sister. She's my half-sister, I guess, but I really like her."

Some time ago Marty's mother was told of her son's activities in New Town. He recalled:

"She asked me if it was true that I was hustling and I said, 'Yeah.' You know what she did? She just laughed. She didn't say nothin'."

[From the Chicago Tribune, Monday, May 16, 1977]

CHICAGO IS CENTER OF NATIONAL CHILD PORNO RING

The Child Predators: Child pornography is a nationwide, multimillion-dollar racket that is luring thousands of juveniles into lives of prostitution. Tribune reporters Michael Sneed and George Bliss spent three months investigating this sexual exploitation of young boys and girls by a national ring of greedy, perverted adults. The series was written by Ray Moseley. This is the second of their four-part report.

A nationwide homosexual ring with headquarters in Chicago has been trafficking in young boys, sending them across the nation to serve clients willing to pay hundreds of dollars for their services.

Existence of the ring was uncovered by a Chicago Tribune investigation of child pornography and child prostitution throughout the country.

The investigation also has disclosed that a clandestine newsletter is being published in Chicago which serves as a conduit for perverts throughout America in engaging children in pornographic modeling and prostitution and in making contact with one another.

Both operations, the police said, were controlled by separate groups of men working together in an interlocking web of vice.

The ring trafficking in young boys goes under the name Delta Project. According to police in Chicago, Los Angeles, and Dallas, it is masterminded by 49-year-old John D. Norman, a convicted sodomist serving a four-year sentence in the Illinois state prison at Pontiac.

His closest associate is Phillip R. Paske, 25, a convicted murderer and thief who police said is now on probation and is carrying on the project in Norman's absence.

The clandestine newsletter is known as Hermes. Police said the principal figures in its publication are Elden Gale (Rusty) Wake, 40, an employe of Trinity College in Lake Forest; Patrick Townson, a Chicago man who operates a citizens band radio information show for homosexuals and is connected with the Ga[illegible] and Events newspaper, and David Berta, who along with Townson was involved in Norman's operation.

Berta was arrested Saturday on a charge of contributing to the delinquency of a minor in connection with the filming of a pornographic movie.

But police said they could take no action against the Hermes operation in the absence of an Illinois obscenity law. The law was declared unconstitutional by a federal court last year.

The Cook County state's attorney's office and Chicago police said Norman's Delta Project was born in Cook County Jail last spring while he was awaiting trial on charges of taking indecent liberties with 10 teen-age boys.

Unknown to jail officials, they said, Norman used the jail's printing facilities to send out three "newsletters" about the project to homosexual clients throughout the country and to people who answered his advertisements in gay publications.

The newsletters said the aim of the Delta Project was "to provide educational, travel and self-development opportunities for qualified young men of character and integrity."

Norman told his readers that "Delta-Dorms" were being established around the country. "Each is a private residence where one of our sustaining members acts as a 'don' for two to four 'cadets'. . . . The nature of the relationship between cadet and sponsor is left entirely to the two of them."

In a prison interview with The Tribune last week, Norman said the Delta Project was a program to provide self-development and training for young men.

"This has nothing to do with sex," he said. "I didn't want to get young kids involved in sex."

But police said Norman's "dons" are pedophiles—adults with a sexual preference for children—and the "cadets" are boy prostitutes recruited for Norman in the Chicago area.

Norman, a tall man with wavy gray hair, acknowledged in the interview that he published this newsletter in Cook County Jail until jail officials stopped the operation, and said he carried on a correspondence with more than 7,000 persons.

"It was quite a project and I would work all day, 16 hours, and I paid another inmate to do the typing and other work during the other eight hours of the day," he said.

Norman said he also plans to go into the business of selling pornographic TV casettes when his prison term is up, but denied that children would be involved.

How many "cadets" have been sent to "dons" on Norman's mailing list is unknown. But police said Paske, out of jail on probation since last July, has kept the project going while Norman is in prison.

The Delta Project operates from P.O. Box 5094 in Chicago.

The Chicago police Area 6 youth division, tipped to the existence of the project last February, began an investigation and determined that the post office box was registered to Paske and Norman.

The probe led police to the discovery that Norman has a long career of sexual abuse of children. Norman, who came to the Chicago area in mid-1973 from Dallas, has a record of 13 arrests for sex offenses going back to 1954.

The Delta project was only the latest of a series of organizations he set up to supply boy prostitutes to male customers around the country, police said.

Earlier, they said, his operation had gone by such names as the Norman Foundation, Epic International, and the Odyssey Foundation. Ironically, Dr. Judianne Densen-Gerber of New York City, heads a national movement to prevent child abuse and neglect, called Odyssey Institute. She is an outspoken foe of child pornography.

Dallas police told Sgt. Ronald Kelly, head of the Area 6 youth division, that they have information associating Norman with the ring that helped transport to Texas the 27 boys murdered in Houston in 1973 in a widely publicized sex and sadism case.

That case involved Dean Coril, a 33-year-old bachelor who police said paid two teenagers to bring other boys to his home where they were sexually assaulted and murdered.

The murders were discovered after one of the teen-agers, Elmer Wayne Henley, shot and killed Coril because, he said, Coril threatened to kill him.

Norman came to suburban Homewood in mid-1973 and lived in the home of one of his Epic International clients. Homewood police said the client later told them that Norman supplied him in the summer of 1973 with a 16-year-old Missouri boy whom he took on a three-week, $4,500 tour of Europe.

Norman, who was then using the alias Steven Gurwell, was arrested in October, 1973, after an anonymous tipster told police he had lured the 10 teenagers into committing sex acts with him by giving them beer.

The police confiscated from Norman a large collection of pornography and a list of 5,000 names and addresses which they say identified clients of his various "foundations." The Tribune subsequently obtained a copy of the list from other sources.

It was not the first that Norman compiled.

Lt. Harold Hancock of the Dallas police arrested Norman in March, 1973, on charges of contributing to juvenile violation of state drug laws. Hancock told The Tribune he confiscated from Norman more than 30,000 index cards listing clients around the country, some of them prominent people and some federal employees in Washington.

"I felt that some federal agency should get the cards and I contacted the State Department through the FBI, I think it was," Hancock said, "All the cards were sent to Washington to the State Department, and that's the last I heard of."

The State Department confirmed to The Tribune that it had received the cards. Matthew Nimetz, a counselor for the State Department, said officials there determined "the cards were not relevant to any fraud case concerning a passport" and therefore destroyed them.

Nimetz was unable to explain why the State Department looked at the cards only from the standpoint of possible passport irregularities or why it had not turned them over to the FBI or postal inspectors.

Shortly after Norman published his first newsletter from Cook County Jail last year, someone in California whom police have not been able to identify provided the $36,000 cash needed for his bail.

Norman went free until December, 1976, when he pleaded guilty to eight counts of indecent liberties with a child and was sentenced to four years in prison.

The police first learned last March of the existence of the Hermes newsletter. An informant in the area of Clark Street and Diversey Parkway, a center of homosexual activities in Chicago, obtained a copy of it and turned it over to police.

Hermes, a bimonthly publication, contains line drawings and photographs of naked boys, articles on "boy love," and advertisements listing coded names that enable subscribers to contact one another and to engage children in pornographic modeling and prostitution.

It is one of three principal "boy love" newsletters in the United States. The others are Better Life Monthly, published in California, and the Broad Street Journal, published in Milliken, Colo.

According to police, Hermes sells more than 5,000 copies nationally every two months and, at $10 a copy, grosses more than $300,000 a year.

Hermes lists its mailing address as P.O. Box 802, North Chicago.

Police said the box was registered to Wake, who works in the audio-visual department at the Lutheran church-run Trinity College, and to the National Press Business, 1445 11th St., Waukegan.

Trinity College has been cooperating with the Lake County state's attorney's office in the investigation of Wake.

In addition to his job at Trinity, Wake is a salesman for National Press Business—a legitimate printing concern—but his only account is himself, police, said. He receives a 15 per cent commission on materials sold—materials that police said go into the production of Hermes.

Police have not determined where Hermes is printed.

The Lake County state's attorney's office has identified Wake as an employee of a children's home and two children's camps between 1964 and 1968.

Police said Townson screens prospective subscribers for Hermes and Berta helps with the layouts.

Townson, 30, has a record of arrests over the last 15 years for fraud, sodomy, and escape from a mental hospital. Berta has no previous arrest record.

Police said they believe Wake is the printer of Hermes.

Copies of Hermes have turned up in arrests of pornographers in California, Michigan, and other parts of the country.

Tomorrow: A look at child pornography and prostitution operations throughout the United States———

Chicago police said Sunday they were looking for about 20 juvenile boys used as models for pornographic pictures and six men believed to have had sex with boys in the last three months.

Three men and two 14-year-old boys already are under arrest in a crackdown on child pornography and child prostitution that the police began Friday night. Among them are two men accused of having made a pornographic movie with children.

Sgt. Ronald Kelly of the Area 6 youth division said Sunday that an undercover police officer had bought a packet of dozens of pornographic pictures of Chicago boys.

He said one of the children has been identified as an 11-year-old boy from the Audy Home, the Cook County juvenile detention center.

"There are at least 20 juveniles in the pictures, and we are looking for all of them," he said.

Kelley said one of the 14-year-olds arrested Saturday named six men, including a doctor who the boy said had sex with juvenile boys and had taken pictures of some of them in the last three months.

Kelley said the six men are being sought.

The principle figures arrested Saturday were David J. Berta, 32, of 3710 N. Pine Grove Av., and John Bell, 19, of 506 N. Clark St.

Police said Berta and Bell used two 14-year-old boys to film a pornographic movie in which Bell also participated. Berta and Bell were charged with taking indecent liberties with a child.

Bell told police after his arrest that the had posed for 108 pictures for a group of Chicago pornographers when he was 15, and had been paid $3,400. Police said Bell also told them he had participated in two pornographic films in New York when he was 15, earning $375 for each film.

Officials of the Illinois Department of Children and Family Services said Bell has been in and out of orphanages and foster homes since he was 6.

They said Bell was one of several hundred Chicago children sent to foster homes in Texas between 1962 and 1973 by the department.

A scandal blew up in 1973 when it was reported that some of the children had been stripped, beaten, and kept in solitary confinement for infractions of rules in the homes.

Among other things, Bell was reported to have been chained to a bed when he killed a dog and forced to wear the dog's tail around his neck for two weeks.

Police said Berta and Bell, after making their pornographic movie in Chicago, handed it over to a police undercover agent April 16 when he assured them he had syndicate connections and could get it processed without risk.

Berta and Bell told the undercover operative they planned to sell 2,000 copies of the film at $50 each to customers throughout the country, according to police.

On Friday night police police took into custody a 14-year-old foster child they said had participated in the movie, and arrested his foster father, David Welch, 26, of 2616 N. Clark St. on charges of having had sex with the boy.

The boy told police that Berta had promised him $100 to participate in the movie but had never paid him. Police said the boy had been in Welch's care as a ward of the state since May 2.

The boy told police he had had sex with Welch on three occasions, they said.

Welch, who police said denied the accusation, was charged with taking indecent liberties with a child.

Police said they were looking for the other 14-year-old boy involved in the film and for a man believed to have done the filming for Berta and Bell.

U.S. ORDERS HEARINGS ON CHILD PORNOGRAPHY

RODINO CALLS SEX RACKET AN "OUTRAGE"

U.S. Rep. Peter W. Rodino Jr. [D., N.J.], chairman of the House Judiciary Committee, announced in Washington that he has ordered hearings on the exploitation of children in pornography and prostitution.

Rodino reported his decision after examining a Tribune series on the problem. He order Hayden W. Gregory, chief counsel of the Crime Subcommittee, and other staff members to contact The Tribune concerning information revealed in the series.

The child pornography rackets have aroused great outrage among the people," Rodino said. "This is a matter to be dealt with as quickly as possible. We are presently conducting the necessary preparations for the hearings."

Rodino is best known for chairing a Judiciary Committee investigation three years ago that resulted in a vote in favor of undertaking impeachment proceedings against former President Richard M. Nixon.

Rodino said the child pornography hearings would be conducted by the Crime Subcommittee, which is headed by Rep. John Conyers Jr. [D., Mich.].

"I feel very strongly about the need to take quick action in this area," Rodino said. "Every decent person recognizes the need of legislation and other steps to expose the sordid rackets involved in the exploitation of children. I'm sure the American people will recognize the necessity of hearings."

Conyers said he expected hearings to be called as soon as possible.

"We want to step in and do everything possible in this situation," he said. "My staff members will also work on the investigation."

Rep. Robert J. McClory of Illinois, the ranking Republican on the Judiciary committee, said The Tribune series "points out the areas the committee should delve into."

The extent of the sexual exploitation of children in Chicago and throughout the nation is a sordid picture," McClory said. "Congress cannot sit still while this growing racket exists."

One bill dealing with child pornography already is before the House Commerce Committee.

Sponsored by Representatives John Murphy [D., N.Y.] and Dale E. Kildee [D., Mich.], the bill would make it a federal crime to ship child pornography across state lines and would provide a penalty of a $50,000 fine or 20 years in prison.

In the Senate, two bills have been introduced. One would impose criminal penalties on the interstate or foreign sale of child pornography, and the other would outlaw the use of children for pornographic purposes.

The Human Resources Committee has adopted a resolution calling on the Senate Judiciary Committee to hold hearings on the bills.

[From the Chicago Tribune, Tuesday, May 17, 1977]

How Ruses Lure Victims to Child Pornographers

About 350 families in southern California belong to the Guyon Society, an organization dedicated to sexual freedom and the motte "Sex by the age of eight or else it's too late."

"We think the law should allow children to be encouraged to have sexual relations with each other and with adults as early as possible," says Tim O'Hara, a 46-year-old Beverly Hills aerospace engineer and spokesman for the group. "Sociologists feel that a child's moral attitudes are pretty well set by the age of 8, and after that it's pretty hard to change them."

The realizations vary, but the methods of child sexual abuse are the same in Los Angeles, Chicago, New Orleans, New York and other cities across the land.

A three-month investigation by The Chicago Tribune of child pornography and child prostitution throughout the United States has led to a Boy Scout troop in New Orleans, homes for runaway and neglected children in Tennessee and Florida, a children's summer camp in Michigan, film studios in New York, and private homes across the country.

The investigation has turned up evidence that pornographers in widely scattered localities keep in touch with one another, subscribe to one another's literature, and share their child victims.

Scout leaders, an Episcopal priest, and several millionaires are among those who have been arrested as law-enforcement authorities begin to recognize the scope of the operations and crack down.

Some are behind bars, some await trial, and others are in flight to avoid prosecution.

But child pornography and child prostitution still flourish on a multimillion-dollar scale involving thousands of youngsters, and nowhere in America do they flourish more than in Los Angeles.

A liberal attitude toward sex, a warm climate that draws thousands of runaway children from all over the country, and an absence of strict laws have combined to make Los Angeles the child pornography capital of the United States.

The Los Angeles-based Guyon Society with its approach to child sex would seem to be skirting the edge of legality, but California authorities so far have been unable to prove that the society has translated its talk into the kind of action that could be prosecuted.

Certainly California has no dearth of cases that clearly do qualify for prosecution.

Sgt. Llyod Martin, who heads a special police unit set up in Los Angeles last September to deal with the problem, estimates more than 3,000 children under age

14 and more than 25,000 in the 14 to 17 age group are being exploited sexually by at least 17,000 adults in the Los Angeles area.

Recently, Martin told The Tribune, police have found evidence that Mexican children are being smuggled into California in specially constructed cars.

"They lay eight children under the floorboards and fender wells," he said. "They stuff those kids in. Then they take them across the border, put them into a hotel, and clean them up."

Martin said several young Mexicans have been killed recently and their bodies found in plastic bags. He suspects they have have been among the children smuggled in for sex purposes, and may have been murdered by "super sadists" who can only achieve sexual gratification by torture and killing.

Martin said 70 per cent of the cases he deals with involve abuse of boys by men.

"Society is made up to take care of little girls, not boys," he said. "You don't tell boys not to take candy from a stranger. What we need is re-education of families where boys are concerned."

In Los Angeles, police told the Tribune, the favorite gathering place of runaway boys and the men who prey on them is in the area of Gold Cup Restaurant at 6700 Hollywood Dr.

One night recently, a Tribune reporter watched about 14 youths, between 12 and 20 years old, waiting on the sidewalk in front of the Gold Cup. Occasionally a man would walk up, a whispered conversation would ensue, and the man would walk away with a boy.

We have no problem finding our sex offenders here," Martin said. "But we don't have laws to detain them."

Since September, Martin's unit has made 40 arrest and obtained only one conviction.

"We've been charging them with child molesting and sodomy," he said. "But the maximum sentence here for child molesting is only two years, and for the second offense three years."

Martin cited two cases to illustrate his problems:

A wealthy man in his 50s was arrested and charged with contributing to the delinquency of a 3-year-old girl. The girl's mother, a prostitute who had consented to sex acts between the child and the man, testified against him and he then pleaded guilty. His sentence: Three months of psychiatric treatment.

A prostitute who stars in pornography movies and a photographer were arrested on charges of conspiracy to contribute to the delinquency of a minor after the photographer took pornographic pictures of the woman's 5-year-year old daughter. The pair were acquitted because the prosecution could not prove specific intent on the part of mother and photographer to contribute to the delinquency of a child.

"We've got to establish contacts with police districts all over the country to crack this nationwide disgrace," Martin said. "Sexual exploitation of children is not only nationwide but worldwide."

Martin said Hermes, a clandestine newsletter for the "boy love" market that is published in Chicago, is well known in Los Angeles. He also said boys are recruited in Los Angeles for a nationwide homosexual ring that is headquartered in Chicago.

A case in New Orleans, which led to arrests in other parts of the country, further demonstrates the connections that exist between child abusers in widely scattered localities.

New Orleans police, acting on a tip last summer arrested Richard S. Halvorsen and Raymond T. Woodall on charges they had set up a Boy Scout troop for the purpose of sexually abusing children.

Eventually 9 men were charged in the case with multiple counts of crimes against nature. New Orleans Detective Mason Spong said the investigation extended into 34 states.

Among those arrested were Richard C. Jacobs of Arlington, Mass., millionaire president of the Jet Spray Corp. and a former part-owner of the New England Patriots football team; Robert B. Mallers, a California millionaire; and Hugh Scott Mellor of Brighton, Mass., millionaire president of a real estate holding company.

New Orleans police said Jacobs has forfeited a $50,000 bond to avoid standing trial in Louisiana.

They said Halvorsen and Woodall went to New Orleans from Coral Gables, Fla., where they had worked as maintenance men for the Adelphi Academies, identified by Florida police as a former male prostitution front that was recently sold to legitimate operators.

In 1974, Halverson and Woodall organized Boy Scout Troop 137 with about 40 boys as members. From that group they selected about 10 to go on Scout trips. Police said sex acts between the men and boys occurred during these trips, and in the process one boy suffered injuries that resulted in his being hospitalized.

Halvorsen and Richard A. Pass, one of the 19 men charged in the case, also, recruited boys for sex by working with community volunteer agencies dealing with runaways or boys from broken homes, police said. They said the two men gave the boys guitars and motorcycle as an inducement.

New Orleans District Att. Harry Connick said the Scout leaders also drew up applications for state and federal money to establish and operate homes for boys, but had not carried through with these plans.

Peter Bradford, formerly a co-owner of the Adelphi Academies, is among the 19 men charged in New Orleans.

Sgt. Tony Raimondo of the Coral Gables police said evidence shows that Halvorsen went to a number of mothers in New Orelans and recruited six boys for the Adelphi Academies.

He told the women he could get free scholarships for their sons to a Coral Gables school that would provide better education than they were getting.

New Orleans police said Bradford then flew to New Orleans and had sex with one of the boys and met parents. Bradford flew back to Coral Gables and the six New Orleans boys subsequently enrolled at the academy.

Bradford is charged with two counts of aggravated crimes against nature in New Orleans but has forfeited bond and remained in Florida, where no charges have been filed against him.

As an indication of the close links that exist among child sex abusers, police said Woodall's address book contained the name of John Norman, now in the Illinois state prison at Pontiac. According to Chicago police, Norman operated a ring that sent boys around the country to serve a network of homosexual clients.

Woodall and Halvorsen have both been convicted and are awaiting sentencing.

A police search of Halvorsen's files turned up the name of Rev. Claudius Ira (Bud) Vermilye Jr., 47, who operated a home for wayward boys in Winchester, Tenn.

Tennessee authorities were notified, and began an investigation. Vermilye was eventually arested on charges that his Boys Farm, Inc., which had been partly financed with state and county funds, was a front for child pornography and sexual abuse.

Vermilye is awaiting trial on 16 charges, including 3 counts of crimes against nature, 8 of aiding and abetting crimes against nature, 4 counts of contributing to the delinquency of minors, and one of using minors in the production of pornographic materials.

Tennessee Atty. Gen. J. William Pope said Vermilye, divorced and the father of five sons, showed obscene movies to the boys to arouse them sexually and gave them liquor to overcome their inhibitions.

Then he encouraged them to engage in orgies, and filmed the orgies with a hidden camera, Pope said. He said some of the films was sold to "sponsors" to raise money and some of the sponsors came to the farm to have sex with the boys.

Police seized a list of more than 270 "active sponsors" of the farm.

A Tribune investigation of the Tennessee case disclosed that a half-dozen Illinois men had bought films from the priest, including one who paid more than $4,000.

The New Orleans and Tennessee cases turned up evidence of another homosexual network involving the Church of the New Revelation of Kearny, N.J., the Ocean Living Institute of New Jersey, Brother Paul's Children's Mission on North Fox Island Mich., and the Educational Foundation for Youth of Illinois.

Further information on these operations came with the arrest last July of Gerald Richards, a Port Huron, Mich., man subsequently convicted of having had sex with a 10-year-old boy.

Richards told police all four of these organizations were fronts for homosexual activity involving boys and all were set up as tax dodges. He identified himself as the organizer of Brother Paul's Children's Mission.

The Church of the New Revelation, which police said placed advertisements in a homosexual publication in California, was granted tax-exempt status by the U.S. Internal Revenue Service as a charity.

"There is no church," said Pete Bouldin, an investigator with the Tennessee attorney general's office. "It's just a referral agency with distributes pornography around the country."

Police said leaders of the organizations drew up plans to obtain federal, state and county funds for child care homes they planned to establish for homosexual and pornographic purposes.

A letter to Richards from Dyer Grossman, a New York teacher and officer of the four organizations, said counties would pay up to $150 per month per boy, states would pay up to $400, and federal agencies up to $700.

Grossman. A member of a wealthy Long Island family, is sought by the FBI on charges of six conduct with 10- and 14-year-old boys in Michigan.

Francis D. Shelden, 48, an Ann Arbor, Mich., millionaire sought on sex charges with boys 8 and 11 years old, owns North Fox Island where Brother Paul's Children's Mission operated. Police said pictures that later turned up in pornographic magazines were taken on the island.

Shelden's name also appears among "sponsors" of the Boys Farm in Tennessee.

In New York, another pornography investigation led last month to the arrest of eight alleged pornographers on felony charges and the seizure of 4,000 copies of pornographic films involving children 8 to 12 years old.

Manhattan District Atty. Robert M. Morgenthau told The Tribune that much of the film material processed in New York was destined for sale in Chicago.

New York undercover detectives made a $20,000 purchase of 4,000 copies of two child pornography films at Criterion Film Labs Inc. Police then raided the lab and also seized thousands of copies of 100 pornographic films at Hol-Jay Studios.

"The pornographers were duplicating child films but there is no evidence any of the films were made in New York," Morgenthau said.

Tomorrow: Why haven't the child pornographers been legislated out of business?

ONLY REGRET: HE GOT CAUGHT

Guy Strait is a child pornographer whose only regret is getting caught.

The nomadic child abuser is serving a 10-to-20 year sentence in Stateville penitentiary for molesting one of three foster children of an associate in Rockford shortly after filming them in pornographic movies.

He said his only regret is the three boys testified against him. "Their lives were ruined because they went to trial. One boy eventually committed suicide," he said.

When arrested, Strait, 57, was one of the nation's leading pornographers. A pornographer for more than 20 years, he had cornered the market on the production of "kiddie porn."

"Let me tell you about kids involved in child pornography," he said. "They are children of lawyers, doctors, policemen, preachers—who are attracted to older men because their fathers have no time for them. They are searching for a father.

"And no one jumps in front of a camera for money. These kids do it for ego. Take a youngster who has never been appreciated. You tell him he's good looking enough to be in front of a camera and that people will want to see him and be interested. It's a great boost to his ego.

"I've helped a lot of kids. Raised about 40 of them, although I didn't have sex with all of them," Strait said. "Some are 40 years old now. I put those in college who wanted it. I've given away bikes. I love to give gifts to children. I've spent a fortune on them.

"The most beautiful people in the world are children."

And he scoured the country searching for young victims for his pornographic films.

California police, who hold a warrant for his arrest, have a voluminous file on Strait, including detailed order blanks from his subscribers requesting sex-action photography for children as young as four years old.

Police estimate Strait made $5 million to $7 million from his business, which is still in operation.

"He had it all," said Los Angeles Police Department Sgt. Lloyd Martin.

"Warehouse, editing lab, studio, pamphlets, magazines, books—you name it.

The children would constantly file in and out of his house. California was his base."

Strait said he is ready to "put a stop to traffic in sex action photography of those under, say 16. I will not be a party to helping law enforcement types harass those who enjoy such materials.

"I would fight the banning of any kind of printed, graphic or spoken material. There was no thought in the framing of the Bill of Rights to exclude pornography from First Amendment protection."

Strait said he knows John Norman, who ran a national male prostitution ring employing young boys and helping put together a "neater package" to attract customers. He also said he wrote an article for Hermes magazine, a Chicago-based journal publishing philosophy and sex stories of "boy love."

"I am a student of Western sexual practices," Strait said. "And I know people may find this hard to believe, but I am an arch conservative."

Dentist Seized in Child Sex Raid; Carey To Open Probe

TWO BOYS, 14, USED IN MOVIE

(By George Bliss and Michael Sneed)

Chicago police arrested a Park Ridge dentist Monday on charges of filming a pornographic movie involving children.

A grand jury investigation of the child pornography racket has been announced by State's Atty. Bernard Carey.

The dentist, identified as Dr. Lloyd William Lange, 42, was the fourth man arrested in a crackdown on child pornography and child prostitution begun Friday by Area 6 youth division officers.

Police charged that Lange filmed a pornographic movie involving two 14-year-old boys that was produced by David J. Berta, 32, and John Bell, 19, both of Chicago.

Berta and Bell were arrested Saturday on charges of taking indecent liberties with a child.

Lange was arrested at 9 a.m. Monday in his office at 625 Devon Av. in Park Ridge.

He was charged with taking indecent liberties with a child—one of the 14-year-olds who appeared in the film—and with contributing to the sexual delinquency of a minor.

Carey said in his announcement he expects a difficult investigation because Illinois no longer has an obscenity law. The most recent law was declared unconstitutional by a federal court last June.

"But it is our responsibility to pursue this with everything we have," Carey said.

He said The Chicago Tribune in its current series of articles on child pornography has "performed a public service in disclosing the outrageous and disgusting abuse of children.

"I'm principally after the producers of child pornography," Carey said. "They are the people who have been making millions of dollars in one of the most sordid rackets I've ever encountered."

In another development, U. S. Rep. John Conyers Jr. [D., Mich.] announced that his crime subcommittee of the House Judiciary Committee will open hearings on child pornography by May 23.

Committee Chairman Peter W. Rodino Jr. [D., N. J.] announced Sunday that he had ordered the Conyers subcommittee to hold hearings after he had examined the Tribune series.

Lange was arrested by Youth Officers Patrick Deady, William De Giulio, and Joseph Bongiorno.

Lange, reported to be separated from his wife and the father of two children, took police to his apartment at 429 Talcott Rd. in Park Ridge.

After he signed a consent-to-search document, police said, they found in the apartment five rolls of Lollitots and Lollipops film, two of the largest-selling child pornography films on the commercial market.

They said they also found 69 rolls of other film in a box but did not immediately determine if they are pornographic. Three 50-foot reels were marked "John Bell—Michigan trip."

Bell told police when he was arrested Saturday that he has a summer camp in Hastings, Mich., he owns with his brother.

Police said Lange gave them his Super 8 Minolta movie camera.

The Police had begun searching for Lange over the weekend. He told them he had been away in Indiana on a canoe trip.

The arrest was supervised by Sgt. Robert Becker of the Area 6 youth division.

In addition to Lange, Berta, and Bell, police have under arrest David Welch, 26, the foster father of one of the 14-year-old boys involved in the pornographic film.

Welch was charged with taking indecent liberties with a child after the boy told police he had had sex with Welch on three occasions. Police said Welch denied the accusation.

Police also have taken into custody two 14-year-old boys, one of them a participant in the movie, and are looking for the second 14yearold involved in the film.

They also are trying to locate 20 Chicago-area children who posed for pornographic pictures that an undercover police agent bought on the street, and are searching for six men believed to have had sex with children.

[From the Washington Post, Sunday, June 5, 1977]

BOYS FARM SCANDAL

PEOPLE IN RURAL TENNESSEE COUNTY 'JUST DIDN'T KNOW' WHAT WENT ON

(By Kirk Loggins and James Branscome)

Alto, Tenn., June 4—The grass has gone to seed on the lawn of the 1½-acre Tennessee Boys Farm, and only the smashed remains of a photographic lab in a red plywood outbuilding serves as a reminder that it was the scene for five years of what authorities called a "house of boy prostitution" that furnished photographs of wayward young boys engaged in homosexual activity to a network of sponsors across the nation.

Inside the seven-room partial brick A-frame, where director Rev. Claudius I. Vermilye allegedly committed and filmed the "crimes against nature" that netted him a 25-to-40-year prison sentence from a Franklin County jury Friday, only torn copies of Reader's Digest, a faded copy of "The Power of Positive Thinking" and a set of word flash cards piled on the carpet were left of the defrocked Episcopal priest's home "where boys could learn self-respect and responsibility."

At the small grocery store that sells gas, bologna, snuff and other vitals to this Appalachian foothills farming community, Mrs. Pete Hill, the owner, was still shaking her head in disbelief. "I just can't believe it went on that long without anyone in the community knowing," she said. "You know how boys are, they want to brag and tell their friends, but those boys got on the bus here and shopped here and we just didn't know. The community wasn't involved."

Hill, stopping her conversation for a moment to sell a bottle of pop and package of crackers, says she felt sorry for "Bud," the name Vermilye was known by locally when he was pastor of the Alto Parish from 1958 to 1962, because "nobody from his family came to support him. If I had a son who did what he did, whether I agreed with it or not, I would have come. Nobody came."

Hill said Vermilye, who frequently bragged about his wealthy New York parents, shopped at the store and "always seemed like a real nice man. The boys helped the farmers around here in the hay and nobody suspected anything." She speculated that, if the boys had not had trouble in the past "people might have been more concerned."

At the placid town of Winchester, the county seat of an area that is a geographical pause between the Cumberland Plateau coal fields and the Cotton Belt, weekly newspaper editor Frey Drewry said the county was relieved that "the week that was, was over."

He attributed the lack of community hostility that often comes of spectacular trials in the mountains to the fact that "this subject was over the people's heads. They didn't understand it. Maybe if it had been girls out there, it would have been different. I don't know."

But Chief Deputy Sheriff Robert Campbell, dining at the 19th-century Hundred Oaks castle modeled after Sir Walter Scott's, was certain that if the jury had deadlocked, "we'd have had trouble on our hands tonight."

"It just seems so out of character," said Mrs. Clifford Williams, a housewife who was one of two character witnesses for Vermilye called by the defense. But Williams said her knowledge of Vermilye came only from the time he was pastor of the tiny, white-frame Alto parish.

And, she said after reflecting on the evidence, "anyone who did the things they're talking about should be put in stocks out here on the courthouse lawn so people can throw rotten eggs at him."

Vermilye, who remained in jail today, unable to make $20,000 bond, took the stand in his own defense and denied that he had committed homosexual acts with the boys under his care or that he had posed them for pornographic photographs received by the home's sponsors across the country.

But, in the face of some 2,000 photographs and 13 letters he wrote to a Delaware sponsor last year, offering slide sets for $25 and touting the skills of two 15-year-old boys at the farm, Vermilye was forced to admit that he had sent nude photos and sexfilled letters to some homosexual sponsors. He maintained, however, that he did this only as a "counselor" in an effort to "keep their desires in the closet."

Circuit Court Judge Thomas Greer consolidated the 12 sentences against Vermilye (totaling 105–165 years) into three groups, to run 25 to 40 years, after telling the defendant he was convinced that the two boys who testified for the defense committed perjury at the direction of Vermilye.

One of those youths, James Puckett, 21, who was the first resident of the Boys Farm when Vermilye established it in 1971, was arrested on a perjury warrant when he visited Vermilye at the jail Friday night, according to Sheriff Jim Brazelton.

Local police were seeking the second youth cited by Judge Greer, Danny Smith, 15, on charges that he assaulted his mother last week at her home in nearby Estill Springs. He had lived at the farm since he was 11.

Tommy Fly, 15, who testified that he engaged in sex with Vermilye and boys at the farm rather than return to his mother and stepfather in Estill Springs, was also being held today in the county jail in Winchester, pending his return to a state juvenile institution in Nashville. He was sent there last month on a marijuana possession charge.

Vermilye's attorneys say they plan to appeal.

APPENDIX E

E.—CORRESPONDENCE

E–1 Responses from State Attorneys General.
E–2 Letters from Members of Congress.
E–3 Letters from Church Groups and practitioners.
E–4 Miscellaneous.

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
New Orleans, La., June 24, 1977.

Representative JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime,
Cannon Building, Washington, D.C.

DEAR MR. CONYERS: Bill No. H.R. 3914 has been referred to me for comment by the National Association of Attorneys General. It has my general support because it seeks to remedy what seems to be an ever increasing serious problem of child abuse and child pornography.

Recent investigations in New Orleans have revealed that the leaders of a certain boy scout troop have lured young boys into performing various homosexual acts, took films and photographs, and sent those films and photographs out of state for publication. The leaders are currently facing serious charges in criminal court in New Orleans. Some stand convicted.

H.R. 3914 will provide a valuable tool in controlling and suppressing the loathsome activities which took place in the "boy-scout case". Its value lies principally in providing a means by which out-of-state "money men" will be subject to the serious penalties provided in the bill. Although out-of-state principals to a felony may be extradited, the process takes time. In at least one instance in the "boy-scout case", an out-of-state resident fled the country before he could be extradicted to Louisiana to face the charges against him. If that individual had been charged federally under H.R. 3914, it would have been more difficult for him to flee.

A bill has recently passed the Louisiana Legislature which attempts to deal with the problem on a state level. For your information, a copy is attached. I commend it to you particularly for its definition of "hard core sexual conduct". The definition is borrowed from another Louisiana law which was drafted to meet the requirements of the 1973 U.S. Supreme Court case of *Miller* v. *California*.

If I have any reservation concerning H.R. 3914, it is that the definition of a "prohibited sexual act" contained in Section 2253 may be broader than the guidelines laid down in the *Miller* case.

However, assuming the bill is constitutional in light of *Miller*, H.R. 3914 has my unqualified support. If I can be of any further assistance, please let me know.

Yours very truly,

WILLIAM J. GUSTE, Jr.,
Attorney General, State of Louisiana.

Attachment.

AN ACT To amend Title 14 of the Louisiana Revised Statutes of 1950 by adding thereto a new Section, to be designated as R.S. 14:106.1, to define the crime of photographing sexual conduct of juveniles, to provide penalties for said crime, and to provide for related matters

Be it enacted by the Legislature of Louisiana: Section 1. Section 106.1 of Title 14 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows: § 106.1. Photographing sexual conduct of juveniles:

A. Photographing of sexual conduct of juveniles is the participating or engaging in the management or production of photographs, negative slides or moving pictures depicting any person under the age of seventeen years engaged in or appearing to be engaged in hard core sexual conduct, with the specific intent to so depict such person. Hard core sexual conduct is that which the average person applying contemporary community standards would find appeals to the prurient interest, is presented in a patently offensive way and the conduct taken as a whole lacks serious literary, artistic, political or scientific value.

Hard core sexual conduct is the portrayal of:

(1) Ultimate sexual acts, normal or perverted, actual or simulated, whether between human beings, or an animal and a human being; or

(2) Masturbation, excretory functions or lewd exhibition, actual or simulated of the genitals, pubic hair, anus, vulva or female breast nipples; or

(3) Sadomasochistic abuse, meaning actual or simulated flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals or female breast nipples, or the condition of being fettered, bound or otherwise physically restrained, on the part of one so clothed; or

(4) Actual or simulated touching, caressing or fondling of, or other similar physical contact with, a pubic area, anus, female breast nipple, covered or exposed, whether alone or between human, animals or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or

(5) Actual or simulated stimulation of a human genital organ by any device whether or not the device is designed, manufactured and marketed for such purpose.

B. Lack of knowledge of age shall not constitute a defense.

C. The provisions of this Section do not apply to recognized and established schools, churches, museums, medical clinics, hospitals, physicians, public libraries, governmental agencies, quasi-governmental sponsored organizations and persons acting in their capacity as employees or agents of such organization.

For the purpose of this Paragraph, the following words and terms shall have the respective meanings defined as follows:

(1) "Recognized and established schools" means schools having a full-time faculty and pupils, gathered together for instruction in a diversified curriculum.

(2) "Churches" means any church, affiliated with a national or regional denomination.

(3) "Physicians" means any licensed physician or psychiatrist.

(4) "Medical clinics" and hospitals means any clinic or hospital of licensed physicians or psychiatrists used for the reception and care of the sick, wounded or infirm.

D. Whoever is guilty of violating this Section shall be imprisoned for not more than ten years with or without hard labor.

Section 2. If any provision or item of this Act or the application there of is held invalid, such invalidity shall not affect other provisions items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

THE ATTORNEY GENERAL,
Baltimore, Md., June 22, 1977.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime,
Cannon Building, Washington, D.C.

DEAR REPRESENTATIVE CONYERS: There are several bills now pending before your committee pertaining to child pornography. I strongly urge your committee to report favorably on this legislation which is designed to curb the growth of this brand of obscenity.

I am concerned that the public exhibition of children engaged in obscene activities will inevitably establish a trend in favor of the commercial exploitation of sex which goes far beyond anything to date. The impact of child pornography upon the entire community, and particularly upon the minds and morals of the young, could be disastrous to any meaningful standards of morality. I do not believe that the law requires such permissiveness.

As you are aware, the State of Maryland is unique in that it employs a Board of Censors to screen all films distributed in the State prior to their exhibition. My office has always actively engaged in defending the Censor Board's enforcement of this statute, and in preventing the dissemination of pornographic films in the State of Maryland. Regulation of materials other than films is handled by the local State's Attorneys' Offices. Despite all the efforts on the part of the State of Maryland to prevent the dissemination of pornography, I believe that strong federal regulation is a necessity. For these reasons, I wish to advise you that I strongly favor the adoption of federal laws on this matter.

Very truly yours,

FRANCIS B. BURCH,
Attorney General.

JULY 7, 1977.

Hon. FRANCIS B. BURCH,
Attorney General,
Baltimore, Md.

DEAR ATTORNEY GENERAL BURCH: This is in response to your letter of June 22nd, expressing your support for bills being considered by the Subcommittee on Crime pertaining to the use of children in production of pornographic materials.

The Subcommittee on Crime held several days of hearings on these bills in May and June, and we expect to hold further hearings on them in the next few weeks.

I was previously aware of the existence of the Board of Censors to screen all films distributed in the State of Maryland prior to their exhibition. Your mention of it in your letter prompts me to inquire whether there might be, in the operation of the Board, some lessons for our Subcommittee as we consider the problem of use of children in poronographic films.

Specifically, some witnesses have suggested that a legal requirement should be imposed upon producers and distributors of films to identify, on the film and/or on the packaging of the film, the names and addresses of the producer and of the persons appearing as "actors and actresses." Failure to so label the films would constitute a separate criminal offense; even if the film was not labeled or was falsely labeled, as could be expected, the producer or distributor could be prosecuted for the dissemination of an improperly labeled film. This would, it is argued, avoid the extremely difficult task of identifying and proving the age of

the child in the film, as would be required under the "child abuse" approach of the bills before us. My questions are:

1. Does the Maryland law cover only films which are to be shown in commercial theaters, or is it sufficiently broad to reach one-reelers intended for private showing?

2. Are there labeling or other requirements relating to identification of producers, actors and actresses, etc.? If so, have you experienced instances of false labeling, and are there adequate mechanisms and sanctions for enforcement?

3. Are you aware of attempts to distribute and show in Maryland films which are required to be reviewed by the Board, but which have not been submitted to the Board?

4. Finally, based on your experience in Maryland, what do you think we could expect to see happen if such a requirement were written into federal law in reference to the problem area the Subcommittee is considering? What we are looking at is not a normal commercial operation, but one which is already largely underground, and it seems to me this requirement would be totally ignored, and we would still be left with the difficult task of proving who was responsible for the production and distribution of the film.

Thank you for your expression of interest in this proposed legislation, and for your assistance to the Subcommittee as we continue our consideration of the bills before us.

Sincerely,

John Conyers, Jr.
Chairman, Subcommittee on Crime.

State of Kansas,
Office of the Governor,
Topeka, September 28, 1977.

Hon. John Conyers, Jr.,
Rayburn House Office Building,
Washington, D.C.

Dear Representative Conyers: Please find enclosed the first report of the National Advisory Committee on Child Abuse and Neglect. The Advisory Committee is a non-partisan group with members from the executive, legislative, and judicial branches of state and local government; and the fields of education, medicine, law, and social work. The Advisory Committee was formed by the Education Commission of the States in conjunction with its Child Abuse and Neglect Project. I have been pleased to chair the Committee for the last two years.

Child abuse and neglect are complex problems which involve all aspects of our life from formal judicial institutions to the nuclear family. The historical roots reach back through the centuries of infanticide for economic and religion reasons, whippings and floggings as discipline, and the assumption that children are the chattel of their parents. Unfortunately, abuse and neglect continue today. However, federal, state and local concern for these problems is increasing.

One of the charges of the Committee is to make recommendations to national, state, and local policy decision makers in attacking the problems of child abuse and neglect. The first report makes such recommendations to members of the U.S. Congress and Executive Departments; State executive officers, and legislators, and to local officials. An executive summary of the issues and recommendations precedes the full report.

In summary, the report recommends at the federal level, that the Congress reauthorize the Child Abuse Prevention and Treatment Act. At the recent annual meeting of the National Governor's Conference, a resolution urging reauthorization of that act was adopted unanimously. The governor's feel this act has served as a catalyst for enhancing state and local prevention and treatment programs as well as spurring states to enact or strengthen their reporting laws, at a minimum, to expand mandatory reporting requirements, and increase or provide services to the children and families involved. The Committee recommends several amendments which in our view would strengthen the Act. They are: to increase authorization for state programs with an emphasis on prevention programs; modify the state eligibility requirements for grants; increase the percentage of funds available for research; and alter the composition and duties of the National Advisory Council.

The Advisory Committee is aware that both the Senate Human Resources Committee and the House Education and Labor committee have considered and favorably reported legislation to reauthorize the Child Abuse Prevention and Treatment Act, H.R. 6693 and S. 961. However, we understand that further action may be dependent upon action taken on H.R. 7093, the Child Exploitation and Prevention Act pending in the House Subcommittee on Select Education and S. 1585, Protection of Children Against Sexual Exploitation Act of 1977, which is being considered by the Senate Judiciary Committee.

Both bills propose to prohibit and penalize the sexual exploitation of children. Such exploitation is itself a form of abuse and the Advisory Committee supports the goal of these two bills. We believe that any approach to attack sexual exploitation of children should be included in Federal criminal statutes such as those presently contained in Title XVIII, the criminal title of the U.S. Code.

At the state level, the Advisory Committee recommends that: (1) state legislatures increase their appropriations for investigating reports and providing services; (2) additional funds be used for training those individuals required to report suspected cases; (3) each governor hold a state level conference to coordinate human services within the state and emphasize the need for coordination in the prevention and treatment of child abuse and neglect; (4) each state adopt the concept of an individual treatment plan in judicial proceedings for abused children and, particularly, their families, and (5) that a single state agency be identified in each state or community with responsibility for providing technical assistance on parenting education programs.

The next section of recommendations is addressed to agencies responsible for public and private school systems including state boards and departments and local school boards. In summary, these recommendations are that: (1) such agencies comply with their responsibilities under the reporting law; (2) school personnel expected to identify and report suspected cases are provided with inservice training; and (3) parenting education be included in the curriculum.

If you or your staff require or desire any further information concerning the reporting of the activities of the Committee, please feel free to contact me.

ROBERT F. BENNETT, *Governor of Kansas,*
Chairman, Education Commission of the
States National Advisory Committee.

OFFICES OF THE ATTORNEY GENERAL,
Baltimore, Md., August 16, 1977.

Re: Child Pornography Legislation

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE CONYERS: I have your letter of July 7, 1977, in which you requested additional information concerning the function and powers of the Maryland State Board of Censors. For reference to the Board's power and jurisdiction see Article 66A, the Annotated Code of Maryland (1970 Repl. Vol. and 1976 Cum. Supp.), a copy of which is attached to this letter.

As to your first question, only films which are to be shown commercially must be submitted to the Censor Board for preexhibition review. Those films which are sold to private individuals and which are intended for private showing do not have to be submitted to the Board. There is also an exemption for any film which is to be shown by an educational, charitable or like organization to its membership.

The statute does not have any requirement regarding labeling or identification of producers, actors and actresses; however, the Board for purposes of its records does record the names listed in the credits shown with the picture. There is also a requirement that the exhibitor furnish the Board a description of the film to be exhibited.

There have been films exhibited in the State of Marylaned which have not been submitted to the Censor Board for approval. This is the exception, however, and not the rule.

The Board employs inspectors who attend all commercial theaters on a random basis and view what is being shown as well as check the film for the Board's seal of approval. When they discover a film which has not been so submitted. the Board, through the Attorney General's Office, files a complaint in the Maryland District Court for violation of its licensing laws.

If the federal law which your Committee is now considering included a provision requiring the identification of the principals involved in the production of the film, it would become very easy to identify those involved in the area of child pornography. I think this requirement, however, might be easily evaded by the use of aliases, or as you point out in your letter, it would be ignored leaving you with the burden of proving who was responsible for the production and distribution of the film.

I hope these answers will be helpful to you and the Committee in your consideration of child pornography legislation. As I stated in my previous letter of June 22, 1977, I feel this is an area of primary concern to citizens everywhere across the country, and it is the policy of this office to diligently police the dissemination of such works through the Maryland State Board of Censors.

Sincerely yours,

FRANCIS B. BURCH.
Attorney General of Maryland.

Enclosure.

ARTICLE 66A. MOVING PICTURES

Section 12. Offices, expenses and compensation of Board.
Section 17. Film submitted for approval; false statements.
Section 19. Review and approval or disapproval of film by Board; judicial determination; appeal; sale, exhibition, etc., of film without approval and license.
Section 20. Penalties in general.
Section 21. Particular penalties.
Section 22. Failure to display approved seal.

§ 1. DEFINITIONS

"Film" and "view" are restricted, etc.

The term "film" includes only those films shown commercially for profit and conforms constitutionally with the rationale of a Supreme Court decision regarding unnecessary intrusions by the State into an individual's privacy. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Films used for "peep shows" are within the purview of this article. Marques v. State, 267 Md. 542, 298 A.2d 408 (1973).

Standing to contest this section, etc., of article.—The proprietor of a store which contains private film-viewing machines has standing to contest those sections of this article which lead up to and result in a license being initially granted or denied and which set forth the Board of Censor's enforcement power, but such proprietor does not have standing to challenge those provisions which are in no way involved in controversy. Star v. Preller. 352 F. Supp. 530 (D. Md. 1972).

This article did not unduly circumscribe plaintiff's privacy, where plaintiff engaged in the commercial distribution of films to the public for his own profit by means of exhibiting the films in individual coin-operated machines. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

§ 2. UNLAWFUL TO SHOW ANY BUT APPROVED AND LICENSED FILM

But present plan is constitutional on its face.

State statutes which require the submission of films for examination or censorship prior to their public exhibition are not void on their face in violation of the First and Fourteenth Amendments. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

This article on its face, or as applied to a case where moving pictures were seized because they had not been submitted to the Board of Censors for approval and did not bear the required seal, does not constitute an "end run" around the preseizure adversary hearing requirement established by the Supreme Court, because the films were seized, not for their alleged obscenity but because they violated this section, since they had not been submitted to the Board for approval. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Term "use" not unconstitutionally vague or broad.—Where the term "use" or "used" found in this section and §§ 6(a) and 17 is confined solely to films or views shown commercially to the public for profit, then it is not unconstitutionally vague or broad. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Films used for "peep shows" are within the purview of this article. Marques v. State, 267 Md. 542, 298 A. 2d 408 (1973).

Standing to contest this section, etc., of article.—The proprietor of a store which contains private film-viewing machines has standing to contest those sections of the Maryland moving pictures statute which lead up to and result in a license being intially granted or denied and which set forth the Board of Censor's enforcement power, but such proprietor does not have standing to challenge those provisions which are in no way involved in controversy. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Injunctive relief barred.—Since at the time of incorporation, filing suit, and beginning operations by plaintiff, decrees of a court of competent jurisdiction upholding the constitutional validity of the Maryland statutes on obscenity and movie censorship were outstanding and unreversed, the cumulative effect of the factors is to establish that plaintiffs do not come into a court of equity with clean hands, so that they are barred from injunctive relief even if their legal contentions are otherwise meritorious. Age of Majority Educ. Corp. v. Preller, 512 F. 2d 1241 (4th Cir. 1975).

Warrant procedure held constitutionally permissible.—Where the seizure of films was authorized by warrants issued by the Supreme Bench of Baltimore City and the warrants were issued on the grounds that there was probable cause to believe that films which had not been submitted to the Board of Censors for licensing, were being exhibited, it was unnecessary for a neutral magistrate to view the films before issuing a warrant because there was no need to determine whether or not the films were obscene, and the warrant procedure utilized was constitutionally permissible. Star v. Preller, 375 F. Supp. 1093 (D. Md. 1974).

Stated in Ebert v. Maryland State Bd. of Censors, 19 Md. App. 300, 313 A. 2d 536 (1973).

§ 3. CREATION OF BOARD OF CENSORS

It is not unconstitutional for Maryland to create a Board of Censors for films but not for other means of expression. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

This article on its face, or as applied to a case where moving pictures were seized because they had not been submitted to the Board of Censors for approval and did not bear the required seal, does not constitute an "end run" around the preseizure adversary hearing requirement established by the Supreme Court, because the films were seized, not for their alleged obscenity but because they violated the Moving Pictures statute, since they had not been submitted to the Board for approval. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

The language of this section is sufficiently definite to furnish adequate standards for the selection of Board members. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Standing to contest this section, etc., of article.—The proprietor of a store which contains private film-viewing machines has standing to contest those sections of the Maryland moving pictures statute which lead up to and result in a license being initially granted or denied and which set forth the Board of Censor's enforcement power, but such proprietor does not have standing to challenge those provisions which are in no way involved in controversy. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Stated in Ebert v. Maryland State Bd. of Censors, 19 Md. App. 300, 313 A. 2d 536 (1973).

§ 6. BOARD TO EXAMINE, APPROVE OR DISAPPROVE FILMS; WHAT FILMS TO BE DISAPPROVED

Legislative intent

In accord with original. See Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

The legislature intended to ban only those films which are "obscene" under the definition of that term set forth by the Supreme Court as a constitutional standard. Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Films Board is commanded to disapprove.—This section commands the Board to disapprove any film or view which: (1) portrays sexual conduct in a patently offensive way in that it contains patently offensive: (a) representations or descriptions of ultimate sex acts, normal or perverted, actual or simulated; or (b) representations or descriptions of masturbation, excretory functions, and lewd exhibitions of genitals; and (2) taken as a whole: (a) would be found by the average person, applying contemporary community standards of the State, to appeal to the prurient interest in sex; and (b) does not have serious literary, artistic, political, or scientific value. Ebert v. Maryland State. Bd. of Censors, 19 Md. App. 300, 313 A.2d 536 (1973).

The exemption for newsreels is valid since newsreels are, by their nature, exhibited primarily for their informative value rather than to entertain and would undoubtedly have redeeming social importance under the Roth test for obscenity. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

The exemptions from the provisions of this article as stated in subsection (a) of this section and § 23 are not unconstitutionally vague and do not deny equal protection of the laws. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Term "used" is not unconstitutionally vague or broad.—Where the term "use" or "used" found in subsection (a) of this section and §§ 2 and 17 of this article is confined solely to films or views shown commercially to the public for profit, then it is not unconstitutionally vague or broad. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

The only valid standard, etc.

The only basis for censorship of motion pictures under this article is "obscenity." Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.28 283 (1974).

And the term "obscene," etc.

The Maryland movie censorship law has never expressly contained a definition of the term "obscene" which has reflected any of the definitions used by the Supreme Court from the Roth v. United States, 354 U.S. 476, 77 S. Ct. 1304, 1 L. Ed. 2d 1498 (1957) case onward. Mangum v. Maryland State. Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Severability of "obscene" standard

In accord with 1st paragraph in original See Mangum v. Maryland State Bd. of Censors, 273 Md 176, 328 A.2d 283 (1974).

In accord with 2nd paragraph in original. See Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

The test of obscenity must be the constitutionally mandated one, regardless of the current formulation of the standard. Star v. Preller, 375 F. Supp. 1093 (D. Md. 1974).

Definition of "obscenity" from most recent U.S. Supreme Court cases applied.—The Court of Appeals has consistently applied the definition of "obscenity" set forth in the most recent United States Supreme Court cases. Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Maryland courts may, consistent with article 8 of the Maryland Declaration of Rights, construe the word "obscene" in this article to be the same as the current Supreme Court definition of "obscene" for First Amendment purposes. Mangum v. Maryland State. Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Test of obscenity

Under the definition of Miller v. California, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed 419 (1973), a film depicting sexual matters would be obscene or hard-core pornography, and thus beyond the protection of the First Amendment, if it meets the following test: (a) the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; and (b) the work depicts or describes, in a patently offensive way, sexual conduct specifically defined as, (1) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, or (2) patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals; and (c) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Since the Supreme Court's decision in Miller v. California, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973), the Maryland Court of Special Appeals has incorporated the Miller test for obscenity into subsection (b). Star v. Preller, 375 F. Supp. 1093 (D. Md. 1974).

Miller definition reached only hard-core pornography.—The Miller v. California, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973) definition reached only "hard-core" pornography. Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Brief review of Supreme Court obscenity cases.—See Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Film "Deep Throat" held obscene under the Miller test.—See Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Standing to contest this section, etc., of article.—The proprietor of a store which contains private film-viewing machines has standing to contest those sections of the Maryland moving pictures statute which lead up to and result in a license being initially granted or denied and which set forth the Board of Censor's enforcement power, but such proprietor does not have standing to challenge those provisions which are in no way involved in controversy. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Quoted in Village Books, Inc. v. State, 22 Md. App. 274, 323 A.2d 698 (1974).

§ 7. CERTIFICATE OF APPROVAL OR LICENSE

Standing to contest this section, etc., of article.—The proprietor of a store which contains private film-viewing machines has standing to contest those sections of the Maryland moving pictures statute which lead up to and result in a license being initially granted or denied and which set forth the Board of Censor's enforcement power, but such proprietor does not have standing to challenge those provisions which are in no way involved in controversy. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

§ 11. FEES

Fees imposed by section are not unreasonable.—Though the power to impose a license fee on the exercise of free speech is highly potent, we do not find that the fees imposed by this section are unreasonable, but rather are necessary to meet the expenses incident to administering this article, and the flexibility of the fees charged according to the length of the film or view is a fair recognition of the fact that a longer film or view will take up a greater amount of the Board's examination time than a shorter one and constitutes no ground for striking down that portion of the Act. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Standing to contest this section, etc., of article.—The proprietor of a store which contains private film-viewing machines has standing to contest those sections of the Maryland moving pictures statute which lead up to and result in a license being initially granted or denied and which set forth the Board of Censor's enforcement power, but such proprietor does not have standing to challenge those provisions which are in no way involved in controversy. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

§ 12. OFFICES, EXPENSES AND COMPENSATION OF BOARD

The Board shall provide adequate offices and rooms in which properly to conduct the work and affairs of the Board in the City of Baltimore and the State of Maryland, and the expenses thereof, as well as any other expenses incurred by said Board in the necessary discharge of its duties, and also the salaries of the members of the Board, each of whom shall receive such compensation as shall be provided in the State budget, and each member of the Board shall be reimbursed for actual and necessary expenses incurred in furtherance of the Board's business within the State of Maryland, in accordance with standard travel regulations, such reimbursement not to exceed three thousand ($3,000.00) dollars per annum for any member of the Board. (An. Code, 1951, § 12; 1939, § 12; 1924, § 12; 1922, ch. 390, § 12; 1941, ch. 727; 1947, ch. 257; 1960, ch. 47; 1961, ch. 96; 1975, ch. 712, § 4.)

Effect of amendment.—The 1975 amendment, effective July 1, 1975, substituted "in accordance with standard travel regulations" for "such as mileage, at the rate established by the Board of Public Works, hotel bills, the costs of meals and any other incidental expenses incurred in attending meetings or carrying out the other provisions of this article" near the end of the section.

§ 14. RIGHT OF ENTRY

This section and §§ 16 and 18 of this article are set forth with sufficient precision to protect those who are subject to the provisions of this article, particularly in light of authoritative judicial construction by the Court of Appeals of Maryland, which restricts enforcement of this article to films shown commercially for profit. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

This section and § 16 not intended to overrule other sections of Code.—This section and § 16 of this article, which give the Board of Censors power to enter premises exhibiting films commercially for profit and to enforce this article, were not intended to overrule other sections of the Code which provide for the creation of police forces with authority to enforce laws within the boundaries of the relevant geographical entity. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

§ 16. ENFORCEMENT; RULES; POWER AND AUTHORITY OF SECRETARY OF LICENSING AND REGULATION

This section and §§ 14 and 18 of this article are set forth with sufficient precision to protect those who are subject to the provisions of this article, particularly in light of authoritative judicial construction by the Court of Appeals of Maryland, which restricts enforcement of this article to films shown commercially for profit. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

This section and § 14 not intended to overrule other sections of Code.—This section and § 14 of this article, which give the Board of Censors power to enter premises exhibiting films commercially for profit and to enforce Article 66A, were not intended to overrule other sections of the Code which provide for the creation of police forces with authority to enforce laws within the boundaries of the relevant geographical entity. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Claim of bad faith enforcement not supported.—Where city police officials seized from plaintiff's coin operated machines 24 reels of film, none of which had been submitted to the Board of Censors for approval or bore the Board's seal, and where there was no indication of excessive police conduct, then plaintiff's claim of bad faith enforcement was not supported. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Where an affidavit submitted by the Chairman of the State Board of Censors demonstrated that the Board, aware of the difficulties it was having in enforcing this article against certain establishments in Baltimore City, such as plaintiff's met with various state officials, including the commissioner of the Baltimore City police department and informed them of the situation and requested that they exercise their respective jurisdictions to obtain compliance with this article and where the police had further information from an investigation of the situation from the Attorney General's office and from subsequent meetings, then there was sufficient probable cause for the police to have obtained the search warrants for raids of plaintiff's premises. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

§ 17. FILM SUBMITTED FOR APPROVAL; FALSE STATEMENTS

Every person intending to sell, lease, exhibit or use any film or view in the State of Maryland shall furnish the Board, when the application for approval is made, a description of the film or view to be exhibited, sold or leased, and the purposes thereof; and shall submit the film to the Board for examination; and shall furnish a written statement or affidavit that the duplicate film or view is an exact copy of the original film or view as submitted for examination to the Board, and that all eliminations, changes or rejections made or required by the Board in the original film or view have been or will be made in the duplicate. Any person who shall make any false statement in any such written statement or affidavit to the Board shall, upon conviction thereof summarily before a court, be deemed guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, and any certificate or license issued upon a false or misleading affidavit or application shall be void ab initio; and any change or alteration in a film after license, except the elimination of a part or except upon written direction of the Board, shall be a violation of this article and shall also make immediately void the license therefor. (An. Code, 1951, § 17; 1939, § 17; 1924, § 17; 1922, ch. 390, § 17; 1972, ch. 181, § 58.)

Effect of amendment.—The 1972 amendment, effective July 1, 1972, substituted "court" for "justice of the peace" in the second sentence.

Provision of section does not deny due process.—The provision of this section which voids ab initio any license issued upon a false or misleading affidavit or application does not deny due process of law since this sanction does not come into play in a First Amendment context unless the State has shown that the falsification was done with knowledge and not accidentally or innocently. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Term "use" is not unconstitutionally vague or broad.—Where the term "use" or "used" found in this section and §§ 2 and 6(a) is confined solely to films or views shown commercially to the public for profit, then it is not unconstitutionally vague or broad. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Cited in Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

§ 18. INTERFERENCE WITH BOARD

This section and §§ 14 and 16 of this article are set forth with sufficient precision to protect those who are subject to the provisions of the act, particularly in light of authorative judicial construction by the Court of Appeals of Maryland, which restricts enforcement of Article 66A to films shown commercially for profit. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

§ 19. REVIEW AND APPROVAL OR DISAPPROVAL OF FILM BY BOARD; JUDICIAL DETERMINATION; APPEAL; SALE, EXHIBITION, ETC., OF FILM WITHOUT APPROVAL AND LICENSE

(b) Any person who shall sell, lease, lend, exhibit or use any film in this State without having first secured approval thereof and a license therefor in accordance with the procedures set forth in subsection (a) above, shall be guilty of a misdemeanor and upon conviction summarily before a court, shall be sentenced to pay a fine of not less than fifty ($50.00) dollars, nor more than one hundred ($100.00) dollars, or to imprisonment for not more than thirty (30) days, or to be both fined and imprisoned in the discretion of the court. Except, no employee of any individual, partnership, firm, association, corporation, or other legal entity operating a theater which shows motion pictures, shall be subject to prosecution under this section if the employee is not an officer thereof and has no financial interest therein other than receiving salary and wages. (1972, ch. 181, § 58; 1973, ch. 99.)

Effect of amendments

The 1972 amendment, effective July 1, 1972, substituted "court" for "magistrate or the Municipal Court of Baltimore City" near the middle of the first sentence in subsection (b) and for "magistrate or judge" at the end of that sentence.

The 1973 amendment, effective July 1, 1973, corrected punctuation in the last sentence in subsection (b).

As subsection (a) was not affected by the amendments, it is not set forth above.

Purpose of 1965 amendment

The amendments to this section, passed by the Maryland legislature in April of 1965 satisfactorily bring that section in harmony with constitutional requirements and constitute a valid exercise of the state's police powers. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

The procedure set forth in this section fully complies with the guidelines enunciated by the Supreme Court in Freedman v. Maryland, 380 U.S. 51, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965), by providing for a prompt judicial determination of obscenity. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Where the prior restraint of a film exhibition is involved, the First Amendment requires that procedures to review the film be as expeditious as possible. This section was amended in 1965 to conform to this requirement. Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A. 2d 283 (1974).

Maryland's motion picture censorship statute meets the constitutional requirements enunciated in Freedman v. Maryland, 380 U.S. 51, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965), both on its face and as applied to the owner of establishments in which were operated "peep shows." Star v. Preller, 375 F. Supp. 1093 (D. Md. 1974).

This section is clear, definite and unambiguous. Harrington v. State, 17 Md. App. 157, 300 A. 2d 405 (1973).

By this section, any person of ordinary intelligence is able to ascertain readily what is required of him if he desires to "sell, lease, lend or exhibit" motion picture film, commercially, and to know that a failure on his part to comply with the requirement will subject him to penalty. Harrington v. State, 17 Md. App. 157, 300 A. 2d 405 (1973).

The State has the right to require the submission of film for prior approval. Harrington v. State, 17 Md. App. 157, 300 A. 2d 405 (1973).

The State has the right to require an exhibitor to submit a film to the Maryland State Board of Censors for its examination or censorship prior to any public viewing of the film. Motion pictures are not necessarily subject to the precise rules governing any other particular method of expression. Harrington v. State, 17 Md. App. 157, 300 A. 2d 405 (1973).

And to attach criminal sanctions for failure to do so.—It is constitutionally permissible for the State to attach criminal sanctions for failure to comply with subsection (a), which requires, before one may "sell, lease, rent or exhibit . . . motion picture film . . .." one must first obtain approval from the Maryland Board of Censors. Harrington v. State, 17 Md. App. 157, 300 A. 2d 405 (1973).

The fact that Maryland has chosen to attach criminal sanctions to the failure to apply for and obtain a license prior to exhibition of a film in subsection (b) provides no basis for striking down that portion of the statute. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Exemption of salaried employees from prosecution was reasonable.—The mere creation by statute of a classification does not constitute a denial of equal protection under the Fourteenth Amendment; it was perfectly reasonable for the legislature to exempt mere salaried employees from prosecution, since they have no control over films shown by their employer. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Lack of adversary hearing before Board of Censors not prejudicial.—Though subsection (a) does not provide plaintiff, a motion picture exhibitor, with an adversary hearing before the Board of Censors on the issue of obscenity, he its not constitutionally prejudiced in this regard because that section does require an adversary judicial determination of obscenity with the Circuit Court for Baltimore City exercising de novo review of the Board's finding of obscenity, and with the burden of proving that the film is unprotected expression resting on the Board. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

No constitutional infirmity in procedure for determining obscenity by court sitting in equity.—There is no constitutional infirmity in the Maryland procedure for determining obscenity by a court sitting in equity as long as essential procedural safeguards in terms of notice and fair hearing are provided. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Trial before the Circuit Court for Baltimore City, an equity court, results in no constitutional defect because of the denial of a jury trial. Star v. Preller, 375 F. Supp. 1093 (D. Md. 1974).

Jury trial is not constitutionally mandated.—A plaintiff is not denied his right to a jury trial in a criminal misdemeanor proceeding under subsection (b), since the penalty involved—a possible $100 fine or 30 days in jail, or both—indicates that the offense is of a petty nature, and thus a jury trial is not constitutionally mandated. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Defendant can raise defense of lack of scienter.—Where a defendant is being prosecuted for failure to apply for and obtain a license prior to exhibiting a film, such defendant would be able to raise the defense of a lack of scienter in a criminal prosecution under subsection (b). Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

And the State would have to prove this element in order to sustain a conviction. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

The failure to find a verdict in respect to a charge brought under subsection (b) is equivalent to a verdict of not guilty on that particular charge. Harrington v. State, 17 Md. App. 157, 300 A.2d 405 (1973).

Administrative Procedure Act does not confer jurisdiction on the Court of Appeals or the Court of Special Appeals for cases arising out of this article. Maryland State Bd. of Motion Picture Censors v. Marhenke, 18 Md. App. 175, 305 A.2d 502 (1973).

The legislature meant to eliminate the procedure for appeals from the Board, and in its place to confer upon the Circuit Court for Baltimore City, to the exclusion of all other courts of the State, the duty to make a judicial determination, whether or not requested by the person presenting the film, as to whether such film is obscene, or tends to debase or corrupt morals, or to incite to crime, whenever the Board has disapproved any film. Maryland State Bd. of Motion Picture Censors v. Marhenke, 18 Md. App. 175, 305 A.2d 501 (1973).

Board excluded from Administrative Procedure Act.—While the legislature did not explicitly exclude the Board from the ambit of the Administrative Procedure Act, it, by providing a special method of judicial review to the Circuit Court of Baltimore City, effectively did exclude the Board from the act insofar as appeals from the Board's decisions are concerned. Maryland State Bd. of Motion Picture Censors v. Marhenke, 18 Md. App. 175, 305 A.2d 501 (1973).

Board has no right to appeal from a decision of the Circuit Court of Baltimore City. Maryland State Bd. of Motion Picture Censors v. Marhenke, 18 Md. App. 175. 305 A.2d 501 (1973).

Before there be an appeal to the Court of Special Appeals, two prerequisites must be satisfied: (1) the Circuit Court of Baltimore City must disapprove the film, and (2) the person who presented the film to the Board for licensing must appeal. Maryland State Bd. of Motion Picture Censors v. Marhenke, 18 Md. App. 175, 305 A.2d 501 (1973).

Appeal from issuance of interlocutory injunction did not deprive trial court of jurisdiction.—See Mangum v. Maryland State Bd. of Censors, 273 Md. 176, 328 A.2d 283 (1974).

Applied in Mangum v. State's Att'y, 275 Md. 450, 341 A.2d 786 (1975).

Stated in Ebert v. Maryland State Bd. of Censors, 19 Md. App. 300, 313 A.2d 536 (1973).

§ 20. PENALTIES IN GENERAL

Any person who violates any of the provisions of this article for which a specific penalty is not provided and is convicted thereof summarily before any court, shall be sentenced to pay a fine of not less than twenty-five dollars, nor more than fifty dollars, for the first offense. For any subsequent offense the fine shall be not less than fifty dollars, nor more than one hundred dollars. All fines and costs shall be paid in accordance with Article 38, § 4. (An. Code, 1951, § 20; 1939. § 20; 1924; § 20; 1922, ch. 390, § 20; 1972, ch. 181, § 58.)

Effect of amendment.—The 1972 amendment, effective July 1, 1972, substituted "court" for "magistrate or justice of the peace" in the first sentence, eliminated the former third sentence, providing for imprisonment for nonpayment of fine, and rewrote the last sentence.

This section mandates the penalties to be imposed for violation of § 2 of this article. Harrington v. State, 17 Md. App. 157, 300 A.2d 405 (1973).

§ 12. PARTICULAR PENALTIES

Any person who shall exhibit in public any misbranded film or film carrying official approval of the Board which approval was not put there by the action of the Board or any person who shall attach to or use in connection with any film or view which has not been approved and licensed by the Maryland State Board of Censors, any certificate or statement in the form provided by § 7 hereof or any similar certificate, statement or writing, or any person who shall exhibit any folder, poster, picture or other advertising matter, which folder, poster, picture or other advertising matter is obscene, indecent, sacrilegious, inhuman or immoral, or which tends to unduly excite or deceive the public, or containing any matter not therein contained when the approval was granted by the Board, shall be guilty of a misdemeanor, and upon conviction summarily in a court of competent jurisdiction, shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100), or imprisonment for not over thirty days, or be both fined and imprisoned in the discretion of the court. In addition to the above penalties, the Board may also seize and confiscate any misbranded film. (An. Code, 1951, § 21; 1939, § 21; 1924, § 21; 1922, ch. 390, § 20A; 1982, ch. 181, § 58.)

Effect of amendment.—The 1972 amendment, effective July 1, 1972, substituted "in a court of competent jurisdiction" for "before a justice of the peace" near the end of the first sentence in the section, substituted "court" for "said justice of the peace" at the end of that sentence and eliminated the former second paragraph, providing for an appeal from a magistrate or justice of the peace.

§ 22. FAILURE TO DISPLAY APPROVED SEAL

If any person shall fail to display or exhibit on the screen the approval seal, as issued by the Board, of a film or view, which has been approved, and is convicted summarily in any court of competent jurisdiction, he shall be sentenced to pay a fine of not less than five dollars and not more than ten dollars. All fines and costs shall be paid in accordance with Article 38 § 4. (An. Code, 1951, § 22; 1939, § 22; 1924, § 22; 1922, ch. 390, § 21; 1972, ch. 181, § 58.)

Effect of amendment.—The 1972 amendment, effective July 1, 1972, substituted "in any court of competent jurisdiction" for "before any magistrate or justice of the peace," eliminated a clause providing for imprisonment for nonpayment of fine and added the present second sentence.

§ 23. EXEMPTIONS; PERMIT

Exemption in § 6 and this section, etc.

The exemption for films exhibited solely for "educational, charitable, fraternal, or religious purposes" is a reasonable, valid classification which gives recognition to the dangers inherent in an extensive censorship system. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

They are not unconstitutionally vague.—The exemptions from the provisions of this article as stated in this section and § 6(a) of this article are not unconstitutionally vague. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

And do not deny equal protection of the laws. Star v. Preller, 352 F. Supp. 530 (D. Md. 1972).

Question for state courts.—Whether certain clubs and corporations allegedly organized for the purpose of promoting education about sexual matters and techniques are bona fide educational organizations or are merely facades to escape prosecution under state obscenity statutes is a question for the state courts to decide after all the evidence is heard and does not involve a federally protected constitutional right. Modern Social Educ., Inc. v. Preller, 353 F. Supp. 173 (D. Md. 1973).

Prosecution was not bad faith harassment.—Where plaintiffs organized allegedly nonprofit educational corporations and clubs for the alleged purpose of promoting education about sexual matters and techniques, and located such clubs in premises where patrons had been traditionally drawn for the purpose of viewing sexually oriented films or printed material, and where anyone, except police officers, can become a member of such clubs by signing an application form and paying a fee at the door, and where the printed sexual material offered for sale and the films offered for viewing in the club are of the same type as those found in neighboring commercial establishments, and where one of the organizers of one of the clubs previously operated the club's premises as a commercial adult book store, then prosecution of the plaintiffs does not amount to bad faith harassment on the part of state officials who were named as defendants in an action by plaintiffs for federal injunctive relief. Modern Social Educ., Inc. v. Preller, 353 F. Supp. 173 (D. Md. 1973).

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 20, 1977.

Hon. PETER W. RODINO, Jr.,
Chairman, House Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Because of my deep seated interest in H.R. 7254, I would very much appreciate it if you would request reports on this legislation from any administrative agencies having jurisdiction over the related subject matter. I would also be very appreciative if your Committee might be able to make any such reports available to me as they are received.

Thank you.

Sincerely,

GUY VANDER JAGT,
Member of Congress.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 30, 1977.

Hon. PETER RODINO,
Chairman, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, Rayburn House Office Building.

DEAR MR. CHAIRMAN: H.R. 3913 and H.R. 3914 which would prohibit the commercial sexual exploitation of children in interstate and foreign commerce are presently before your subcommittee. There are 103 members of the House who have joined in sponsoring versions of this legislation.

We feel that the problem is serious, and we want to pass the best possible piece of legislation to end this sordid activity. We would, therefore, greatly appreciate it if you would expeditiously schedule hearings on these bills.

Sincerely,

John M. Murphy, Albert H. Quie, Clarence Brown, Tom Bevill, William Broomfield, Donald J. Pease, Stephen J. Solarz, Theodore Weiss, Dave Stockman, Joseph A. LeFante, Matthew Rinaldo, William M. Brodhead, Robert J. Lagomarsino, Leo C. Zeferetti, Claude Pepper, Trent Lott, Gunn McKay, Harold Sawyer, Max Baucus, Dan Glickman, Ronald M. Mottl, Robert A. Young, Norman D. Dicks, Baltasar Corrada, Elford A. Cederberg, G. V. Montgomery, Shirley Chisholm, Robert Michel, Mickey Edwards, Raymond F. Lederer, Timothy E. Wirth, Marilyn Lloyd, Martha Keys, Charles E. Grassley, Dale E. Kildee, James C. Cleveland, Jack Kemp, William R. Cotter, James H. Scheuer, David L. Cornwell, Lindy Boggs, Ron Mazzoli, Newton I. Steers, Jr., David Treen, Donald Mitchell, James Blanchard, Berkley Bedell, B. F. Sisk, Mark W. Hannaford, Les AuCoin, Bo Ginn, Daniel K. Akaka, John G. Fary, Thomas A. Luken, Charles Wilson, Dan Daniel, Bob Traxler, Charles B. Rangel, Gladys Noon Spellman, Ed Jones, Parren J. Mitchell, Dan Marriott, William Ketchum, Barbara A. Mikulski, Stephen Neal, Elliott Levitas.

APPENDIX E-3 LETTERS FROM CHURCH GROUPS AND PRACTITIONERS

THE FIRST WESLEYAN CHURCH OF ALEXANDRIA,
Alexanderia, Va., May 31, 1977.

Hon. JOHN CONYERS,
Chairman, Subcommittee on Crime, House Judiciary Committee, Cannon House Office Building, Washington, D.C.

DEAR CONGRESSMAN CONYERS: The Child Abuse Prevention Act, H.R. 3914, which is before the House Subcommittee on Crime, has come to the attention of the members of the First Wesleyan Church of Alexandria. We are very concerned with the protection of our children from sexual exploitation and would like to support the provisions of this Bill. Therefore, the undersigned persons are wholeheartedly in favor of the passage of H.R. 3914:

Sincerely yours,

Rev. J. E. KRAUS,
(And 25 others).

GRACE UNITED METHODIST CHURCH,
Hamilton, Ohio, May 19, 1977.

Rep. JOHN CONYERS,
Chairman, House Judiciary Committee,
Subcommittee on Crime,

DEAR SIR: The Social Concerns Commission of Grace United Methodist Church in Hamilton, Ohio, is anxious to inform you that we strongly support the Bill, H.R. 3913, dealing with child abuse in the field of pornography, and with persons and organizations responsible for such abuse.

As a concerned Christian group, we hope that you, also, will be supporting this Bill.

Sincerely,

Mrs. JOHN GLINS,
Commission Member.

NOTE: Please send any correspondence to Mrs. Ruth Burns, Commission Chairman using the Church address.

CHRISTIAN ACTION COUNCIL,
Washington, D.C., May 16, 1977.

Hon. PETER W. RODINO,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN RODINO: In the past we have had occasion to be grateful to you for facilitating hearings in Congressman Edwards' subcommittee on the abortion issue.

I write personally and in behalf of the Chritsian Action Council to commend you for your projected inquiry into the abominable practices of Child pornography and homosexual prostitution. This no less than Watergate needs a dynamic follow-through. Please spare no effort to secure justice.

Does it occur to you that there may be a connection between the abortion-on-demand mentality and this obscene traffic? After all, if the protection of developing human lives from death is of no "compelling state interest," will not some people find it plausible to engage in this degrading commerce in young lives?

Sincerely yours,

HAROLD O. J. BROWN, *Chairman.*

CENTRAL POINT, OREG.,
May 26, 1977.

SIR: There has been a lot of concern in our church about the use of children in pornography. Our hearts go out to these children and we feel we should do something to help. All we know to do is to pray, and write letters to those who can make laws to protect all people from this hard-core pornography, especially children, as soon as possible.

We know that you are sickened by this too, and we want you to know that we are behind you.

Thank you.

Respectfully,

MRS. VIRGINIA PATTERSON.

UNIVERSITY OF DENVER,
Denver, Colo., August 26, 1977.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime, Congress of the United States, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CONYERS: Thank you for your letter of August 10, 1977 and for the enclosed copy of the Bill H.R. 3913. My apologies for the delay of my response. The latter was due to an extended European trip.

I believe that Federal legislation relating to sexual abuse of children is long ovedue. Please allow me to congratulate the Congress, the House Committee on the Judiciary, and your Committee for the efforts to combat and possibly prevent the social ill reflected in sexual abuse of children.

Sexual abuse of children, I have speculated and expressed in the training I am conducting throughout this country, Canada, and some European countries, far exceeds the incidence of physical abuse of children. This may be due to (1) a progressive pleasure conditioning of children (not as much present in physical abuse) which prevents children from informing societal sources outside the family; (2) a direct involvement of the adult family environment of the child for the purpose of monetary and/or own sexual gratification; and (3) the sexual stimulation provided through various societal means (porno movies and other mass media) to the adult world in our society frequently encourages satisfaction by resorting to the innocent and defenseless child. Photographing children as it has appeared in the porno market is a form of sexual abuse for (1) it exploits the child at the time that such a child is photographed and (2) such photographs provide a stimulant for certain adults to sexually attack children.

I agree that sexual abuse of children (including the photographing of children) is a form of child abuse. The emotional and exploitation adverse impact onto the sexually abused child is far greater than the impact of physical abuse of children. The latter, I believe, is due to the following: the sexually abused child eventually discovers that most of his/her peers have not been sexually exploited by their adult family and/or other environment as compared to the physically abused child who usually discovers that most of his/her peers were "also" corporally punished (i.e., the mind of the average child could not possibly make the distinction between corporal punishment and physical abuse for in many instances the line of demarcation between the two is very thin.) Thus we need separate laws for the sexual abuse of children.

My review of some state laws relating to sexual abuse of children has left me unimpressed for (1) they are very broad, (2) they have no provisions (rightly so) for interstate transporting, selling, etc. and (3) the penalties imposed upon the violators are ridiculously light. Again, the latter necessitates Federal law(s).

My overall impression of H.R. 3913 is very positive. However, I would like to offer for the Committee's consideration two suggestions for inclusion which could be stated as follows:

(1) Additional provisions in the law ought to be made which shall assign responsibility to the parents of any child "to provide the appropriate supervision so that the child will not be subjected to any form of sexual abuse committed by family and/or others." This could serve as a provision of prevention.

(2) Additional provisions in the law ought to be made which shall assign responsibility to the family to seek total family treatment by a recognized community resource if the sexual abuse has been inflicted to the child(ren) by a family member(s). Also, this provision could serve a preventive goal for we know from experience that a child may imitate his/her parent(s) when later in his/her life parental roles might be assumed.

Thank you for the opportunity to share my thoughts.

Sincerely,

ALEXANDER G. ZAPHIRIS, ED.D.,
Professor.

HENDRIKA B. CANTWELL, M.D.,
Denver, Colo., August 25, 1977.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime,
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE CONYERS: It is very flattering to receive a letter from the Congress of the United States and to be asked for an opinion!

This is in response to your letter of August 10, 1977 concerning H.R. 3913, 89th Congress First Session.

Our youngest son very carefully selected the college he attended because he wished to attend its excellent business school. He has always been very committed to the capitalist system and hoped to start his own business venture. After the first year he came home very disappointed and changed his major. It seemed that the problem was that the teaching focused on the idea that any business which makes money is a good business regardless of the quality of the product. To him this seemed an immoral attitude. The fact that a product might be physically or morally harmful to the consumer, or one of poor quality, was evidently considered to be subservient to the business concept that making money would make it an acceptable business product. If that is indeed a widespread attitude, then pornography is very successful, and by implication that makes it acceptable. Tragically, attempting to make a lucrative business illegal has not met with much success (to mind come the period of prohibition, heroin traffic, and prostitution). In addition, is the penalty of $50,000 realistic for such a profitable business? It apparently generates large amounts of money and $50,000 may not be enough to deter anyone when the stakes are so high.

Experience over many years has convinced me that the children who are preyed upon are available for a reason. Often they are runaways who may well be escaping from an abusive home. As an example, physical, sexual, and emotional abuse play a major role in the lives of the drifting young. They may be the children who have been sent out of the home by parents or are totally unsupervised or cared for. They may even be encouraged to participate by parents since the pay is good.

I would suggest that some part of the bill should address itself to parents. If by commission or omission they have failed to provide reasonable protection for their minor children, I feel that they should be dealt with within the jurisdiction of their state according to its child protection laws. The child's availability to the pornographic business enterprise constitutes a form of serious neglect. The parents or responsible adults must at least be able to show that they were concerned (i.e. attempted to find the minor who ran away or have asked for help through Social Services or other counseling services or have filed a CHINS petition). If forced to be referred under child abuse and neglect statutes, hopefully some treatment may be made available to the minor.

My other concern is that a strong demand generally generates a supply. Should not a deterrent be included which addresses itself to the purchaser?

Mainly, I would like to support you in the effort made so far. The bill is delightfully short and succinct. Perhaps my suggestions could be included equally briefly.

E.g. "Any person actively soliciting the purchase of pornographic material which portrays children in the above mentioned activities shall be fined and/or serve a prison term," and

"If the identity of the minor child is known, the parents must be held accountable under the law dealing with child abuse and neglect."

Sincerely,

HENDRIKA CANTWELL, M.D.,
Pediatric Consultant, Denver Department of Social Services for Children and Youth.

THE NEW YORK SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN,
New York, N.Y., August 24, 1977.

Hon. JOHN CONYERS, Jr.,
Subcommittee on Crime, Congress of the United States, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CONYERS: Thank you for your inquiry regarding H.R. 3913 in your letter of August 10th. 1977. However, any comments or opinions expressed are not intended to reflect any official, formal position and/or statement of The New York Society for the Prevention of Cruelty to Children, but are personal opinions made in my individual capacity.

I am not familiar with Title 18, United States Code, and its existing provisions which may or may not affect an evaluation of H.R. 3913.

The citation of the proposed Act as the "Child Abuse Prevention Act" is misleading. The Act is not concerned with child abuse as a recognized form of adult behavior directed toward children.

In the professional field of child protective services, "child abuse" as a phenomenon involves acts of commission directed toward a child by a parent or guardian which adversely affects the child, with the need for intervention and responsibility to offer protection to the child victim and related services to the family.

Further, to limit sexual abuse as defined by H.R. 3913 is misleading. The sexual abuse of children certainly is not limited to their use in film or picture making.

The sexual abuse of children, as identified by child protective services, is a much more extensive and pervasive problem than the limits of H.R. 3913. Sexual abuse is recognized as children who have been victims of overt sexual acts, committed upon them, who need protection.

The focus of H.R. 3913 is the use of children in pornographic pictures and/or films, and the criminal sanctions to be imposed therefor.

There is in existence in most of the states, penal laws for offenses relating to children and the endangerment of their welfare. In addition, a number of states are passing new criminal sanctions comparable to the proposed federal bill. It would be more appropriate to continue the violations on a state level, rather than a federal level, and encourage their greater enforcement by the appropriate local, legal agencies.

In addition, there must also be due consideration given to existing federal interstate commerce laws, and the criminal penalties involved.

To create special legislation in this specific area only lends itself to potential sensationalism and exploitation of children.

An analysis of existing state and federal criminal laws also seems appropriate in order to determine if there is a need for the federal legislation as is now being proposed.

I have refrained from commenting on the potential legal problems legislation of this kind may encounter under the First Amendment of the United States Constitution. Even if passed by the United States Congress, and signed by the President, the impediments of litigation in the Courts could delay its enforcement endlessly. Therefore, a concerted effort to utilize existing laws seems to be a more effective approach to pornography.

Child protective services are concerned with the exploitation of children in pornography. However, it cannot be maximized too emphatically that the preexisting conditions which catapult children into pornography is the area that must be identified and serviced: broken homes, physical and sexual abuse within the home, violent marital friction, alcoholism, and ultimately the runaway.

To consider legislation that would mandate not only services to the abused and neglected child, and appropriate monies for such services would unquestionably be a contribution to the care and protection of our most vulnerable and defenseless asset—the children of the United States.

Sincerely,

HORTENSE R. LANDAU,
Executive Director.

RENE GUYON SOCIETY,
Beverly Hills, Calif., May 25, 1977.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime, House Committee of the Judiciary, National Capitol Building, Washington, D.C.

DEAR MR. CHAIRMAN: Our group wishes to testify on HR 3913, the child sex film bill.

Are you going to hold any hearings on the West Coast?

Please advise the name of the chief clerk of the Judiciary Committee.

Please send a copy of your biography.

Respectfully submitted,

TIM O'HARA.

RENE GUYON SOCIETY,
Beverly Hills, Calif., June 13, 1977.

Hon. JOHN CONYERS, Jr.,
Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR SIR: Thank you for your comprehensive and well-thought-out letter of May 31st.

Enclosed you will find the requested written outline or draft of what would be the substance of our statement for testimony.

The outline may not be understandable word-by-word but gives a sampling of where our testimony derives its stands and the many sources of our research. It is the result of 12 years and the input from at least 100 scholars. Many of them repeated themselves because it seems the stand of the Guyon Society existed decades before it was formed by a group of 7 married couples and one single lady 12 years ago.

We have taken the liberty of putting the lines of reasoning in two columns since they follow the unique division of dogma vs science or left-wing vs right-wing. Our group was formed of conservative people who wanted to end the trashing of the private and public wealth of this Nation by neurotic children and neurotic adults.

I have taken the liberty of enclosing also two of our many exhibits.

We have attracted over the years many people from the civil rights and other movements. People who feel Progress requires change and the shucking off of ancient untruths. These people carry mental and physical scars from harassment, damage to their personal property, etc. As a result we have not invested in an office nor a telephone. Everywhere we go to testify on TV, radio or lecturing at meetings or colleges, we meet with applause and often standing ovations. Perhaps it is we, not the backers of HR 3913 and HR 4571, who have the backing of the Public.

We hope that you will have Los Angeles hearings.

Respectfully,

TIM O'HARA.

OUTLINE OF THE 40-MINUTE LECTURE BY THE GUYON SOCIETY JUNE 7, 1977—SUGGESTED VERSION FOR SUBCOMMITTEE ON CRIME, COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES

(Jewish book, "The Talmud," approves early sexuality (early as 3 years)
Golden Age of Greece 40 BC teacher-student sexuality glorified)

New Testament written 100 AD.

400 AD St. Augustine of Hippo, N. Africa, creates Body Guilt for political control—son suicides at age 19. Rome falls 425 AD., Augustine blamed barbarians try to get Augustine; few words added to New Testament.

Body Guilt whispered through centuries.

Dr. Sigmund Freud speaks out—1897—Supports early age sex; explains subconscious; explains antisocial act roots.

1910—World Psychiatry accepts Freud "Passions of the Mind"; novel by Irving Stone; details acceptance.

1912—Adds bisexuality. Dr. Carl Jung remains puritannical.

1937—Dender & Blau, exhibit A.

1942—Dr. Karl Menninger approves; adds comments, exhibit B.

Citizens for Decent Literature formed.

Cardinals and bishops disappear from letterhead.

1947—Dead Sea Scrolls found and translated.

1960—Calif. Legislature finances study confirming Freud's stand exhibit C; sociologists fix age 8 as last chance for positive sex attitude.

1964—Guyon Society formed; Finland legalizes boy-boy sodomy.

All Calif. censor bills defeated.

1973—Pediatrics publishes articles, exhibit I.

1974—Pope feels church is dying, exhibit L.

1975—Los Angeles Times publishes father-daughter item, exhibit G.

1975—Calif. legalizes adult-adult sodomy, recall fails, exhibit H.

Rome-Moscow alliance.

1977—Children kill adults in East Los Angeles insurrection.

1977—Dr. Densen-Gerber, apparently sole psychiatrist, stirs the uninformed. Is she illegally financed? Exhibit K. Why won't Kildee mention backers? Exhibit J. Facts and myths presented in hodgepodge.

Facts: Rape, assault.

Myths: Pornography, exploitation, sexual abuse, ruined for life.

Interspersed comments in lecture:

National Council on Crime & Juvenile Delinquency president data.
Lutheran Hospital Society, exhibit D.
American Suicidology Association clipping, exhibit E.
Dow Jones National Observer article, exhibit F.
California Superintendent of Schools, Philip Wylie, novelist, conclusions statement by U.N. delegate on penal matters.
Margaret Mead research.
40-year pals from Bible Belt make positive comments.
Neighbor comments—3 negative letters contents; TV phone-in comments.
Masters & Johnson research results.

Benefits to Nation if H.R. 3913 and H.R. 4571 are defeated:

Media, major filmmakers would enter mental health field.
Children would no longer run away from home.
Parents could discuss sexuality with their offspring.
Police could concentrate on major violent crime.
Neurosis as a crime cause would disappear.
Alcoholism and drug usage would decline and disappear.
Prostitution would disappear.
Rape may disappear.
Highways would become safer.
Children shooting at adults would end.

Exhibit A

THE REACTION OF CHILDREN TO SEXUAL RELATIONS WITH ADULTS[*]

(Lauretta Bender, M.D. and Abram Blau, M.D.)

Within recent years there has been an increased interest in the problem of sexuality in children. The psychoanalytic school of psychiatry has placed especial emphasis on this subject as affecting the development of personality and neurotic problems. Although it has been established that sexual activities between children are not uncommon, remarkably little attention has been offered to the effect on children of adult-child sex relations. It is the purpose of this paper to present a psychiatric study of the reaction of children who have experienced actual sex relations with adults.

The seduction of children by adults is a recognized social problem, and it has received attention by legislative bodies in all civilized countries. A complete investigation from this viewpoint has recently been made in England by a Parliament Commission,[1] and the law in the United States has been reviewed by Humble[2] in 1921. There are no exact statistics available regarding the frequency of child seductions, but reliable estimations indicate that they are more frequent than generally comes to the attention of the courts and social agencies. The few psychiatric studies have been concerned mainly with the adult offender, this phase has recently been outlined by Gillespie,[3] and the older literature is reviewed by Moll.[4] The psychic effect of adult seduction on the child has been in the greater part merely presumed as harmful; must of the information is based on retrospective histories from psychopathic patients. Abraham[5] agreed with Freud in assigning a secondary role to sexual traumas in youth as a cause of a neurosis or psychosis, and thought that such experience only exercised an influence on the form of the mental picture. Abraham also presented the thesis that sexual trauma may be regarded as a form of infantile sexual activity and that in many cases it was desired by the child unconsciously. The English school on psychoanalysis of children, as led by Melanie Klein[6] has stressed the importance in the early psychic development of the child, especially of the neutrotic child, in viewing the primal scene or adult sexual acts between the parents, and Klein has stated that an experience of seduction or rape by a grown-up person may have serious effects upon the child's psychic development. On the other hand, a report by Rasmussen[7] would seem to disprove the sexual assaults on children below 14 years of age have a detrimental effect on their mental development. Rasmussen based her research on 54 cases selected from court records (1902–1914) in which the victims were medically examined, and the offenders were convicted. The age of the children was from 9 to 13 years, and their ultimate fate in adult life was surveyed as to mental health and social adjustment. Forty-six of the victims seemed none the worse for the experience; many of them at the time of the survey were * * * in this study seems to indicate that these children undoubtedly do not * * * completely the cloak of innocence with which they have been endowed by moralists, social reformers and legislators. The history of the relationship in our cases usually suggested at least some cooperation of the child in the activity, and in some cases the child assumed an active role in initiating the relationship. This is in agreement with Abraham's[5] views. It is true that the child often rationalized with excuses of fear of physical harm or the enticement of gifts, but these were obviously secondary reasons. Even in the cases in which physical force may have been applied by the adult, this did not wholly account for the frequent repetition of the practice. In most cases the relationship was not broken until it was discovered by their guardians, and in many the first reprimand did not prevent the development of other similar contacts. Furthermore, the emotional placidity of most of the children would seem to indicate that they derived some fundamental satisfaction from the relationship. These children rarely acted as injured parties and often did not show any evidence of guilt, anxiety or shame. Any emotional disturbance they presented could be attributed to external restraint rather than internal guilt. Finally, a most striking feature was that these children were distinguished as unusually charming and attractive in their outward personalities. Thus, it is not remarkable that frequently we considered the possibility that the child might have been the actual seducer rather than the one innocently seduced.

In the present state of our knowledge regarding the psychology of the child, it is unnecessary to elaborate on the affirmed existence of over sexuality in the prepuberty child. The work of Freud,[11] Hirschfeld,[12] Guyon[13] and others has established this fact without a doubt. Guyon, in his recent book, draws attention to the general misconception of allying the sexual sense of pleasure with the sexual function of reproduction, and he stresses the possibility for their differentiation, particularly in the child.

Freud[11] divides the sexuality of the child into 2 periods: the period of active infantile sexuality extends to about the sixth or seventh year, and the latency period which continues from then onward to the age of puberty. During the period of latency, the overt sexual interests become less apparent, the sexual energy is diverted and sublimated for intellectual development, and the whole personality wears a more settled air. However, Freud recognized that complete latency was only a theoretical extreme, and he agreed that sexual activity might occasionally reappear or remain throughout the whole duration of the latency period. Some authors have objected to the concept of a latency period in childhood on the basis of anthropological evidence that sexual activities exist among

2

primitive children (Seligman,[14] Malinowski [9]). Glover [15] states that the concept of latency only purports to indicate that an extensive infantile sexual organization does not evolve continuously. Malinowski [16] attributes the phenomena of "latency" in European civilization to environmental and social forces rather than to an inherent tendency. It is probably true that most psychoanalysts now recognize that overt heterosexual behavior may not be wholly absent in the "latency" period.

In many countries, especially in the East, sexual activity among children, particularly of girls, is recognized as normal.[13] The law of the Koran authorized the marriage of girls of 9 and of boys at 12 years.[13] In India, infantile marriage has been customary for many centuries; according to the 1921 census, there were 2,000,000 wives and 100,000 widows under 10 years.[17] Although it has been claimed that such marriages are rarely consummated before puberty, the contrary has been reported by the Joshi Committee of 1929.[18] This Hindu custom seemed to be popular and did not shock anyone until a few years ago when it was investigated from the Western viewpoint. Even our Western laws have fixed the age of consent as low as 12 years. Until 1929, England retained the marriage age at 12 years for girls, and 14 for boys; and in France the age of consent was raised from 11 to 13 years only in 1863. Similar laws still exist in the United States.[3]

In addition to the evidence from the early age of marriage in former days, biographical writers and others give numerous instances of the sexual precocity of very young girls and their willingness to indulge in sexual acts, often even before puberty. Typical examples can be found in the Memoirs of Casanova; and in the Confessions of La Marquise de Brinvillers,[10] the statement is made that she lost her virginity at the age of 7. Guyon notes that the use of child courtesans was at one time quite frequent in China, Russia and Naples, and that travelers have remarked upon the seductive manners of children in many countries where the mores are more lenient regarding sex. Malinowski [9] states that in Melanesia the girls begin sexual intercourse at about the age of 6 to 8, and 10 to 12 in the case of boys. Furthermore, the severity of primitive and modern laws regarding incest (Frazer,[10] Malinowski,[9] Roheim [20]), which refers primarily to relations between parent and child, suggest that such tendencies must exist among humans. It is unnecessary to discuss the psychological motivations at the basis of these taboos, but their significance is implied by the fact that there is a complete lack of scientific proof of any possible deleterious eugenic or other effects, despite popular belief to the contrary (Briffault [21]).

Some special factors may predicate the retention of overt sex interests into the latency period. Theoretically, a number of possibilities suggest themselves; these and their corresponding illustration in our cases may be noted. First, some children may by constitution be very intolerant of any denial of satisfaction or may possess unusually strong desires; in our material, most of the children showed an abnormal interest and drive for adult attention, and they were endowed with unusually attractive, charming personalities. Secondly, the inhibiting forces may be deficient due to defective judgment on the basis of mental deficiency; a few of the cases had moronic or borderline intelligence. Finally, external or environmental factors may favor poor emotional development; some of these children were unfortunate in being denied the normal satisfaction of tender parental love or other external interests, which aid the emotional growth of the child. Another external factor may be the abnormal stimulation of the sex urges by adults.

* * * experience of the child, its sex relationship with adults does not mean always to have a traumatic effect. Psychic trauma, according to Freudian definition, is an experience which represents an offensive impulse coming from within; it is internal experience rather than external events which prove repulsive and require repression. In our cases, the experience seems to satisfy instinctual drives, and any contrary urges (training, moral and ethical ideas, etc.) are probably suppressed by the unique mutual alliance of child and adult. The association in the act of a grown-up, who to the child must still represent the omnipotent parent, probably condones the transgression. Secondly, the experience offers an opportunity for the child to test out in reality (Isaacs [22]), an infantile fantasy: it probably finds the consequences less severe, and in fact actually gratifying to a pleasure sense. The emotional balance is thus in favor of contentment.

Our material does not permit any speculation regrading the remote effects of overt adult sex activities on children. However, a careful investigation of this aspect of the problem recently undertaken by Rasmussen[7] purports that deleterious influence on the adult personality is minimal in so far as can be judged by social adjustments and freedom of mental illness. Among 54 cases studied in a follow-up in later years, Rasmussen found only 8 women who were abnormal from a psychiatric viewpoint, and in these, other more significant predisposing factors were present.

Some of the children show immediate harmful effects on their personality development. The infantile stage is prolonged or reverted to in the younger child, and the so-called latent stage with its normal intellectual and social interest is sacrificed. There appears to be mental retardation in some cases, and school accomplishments are thwarted. Anxiety states with bewilderment concerning social relations occur especially in children who are seduced by parents. Such incest experiences undoubtedly distort the proper development of their attitude towards members of the family and, subsequently, of society in general. Rathsom[8] notes this special difference of reaction in incest cases as compared to relations with non-related adults. In the prepuberty stage there seems to be a tendency for premature and discrepant development in adolescent features. This displays itself sometimes in an increased interest in sex matters and an independence from authority without the associated personality, intellectual and physical development of the adolescent. The preoccupation with ill-expressed fantasies and a tendency to withdraw from the activities of normal childhood may give the child the appearance of being either very dull and defective or schizoid.

A more remote social danger of child-adult sex relations is probably attributable directly to these phenomena. This is child murder. One publication[24] cites 3 cases of child assault followed by murder of the victim. One may presume that the secondary realization of the implications of the crime of seduction and the possibilities of exposure predicate the perpetration of the second crime.

Treatment in our cases was concerned mainly with relief of the acute reactions. These were met by frank discussion of the situation and a diversion of energies into play and intellectual pursuits. In most cases where adequate substitutes were offered, the children quickly lost their sexual interests. In those instances where the sexual problem was part of the more general problem of hyperkinesis and psychopathic personality disturbances, constant supervision was indicated and institutional care advised. The same was true of the more retarded children, largely because the institutions for defective children could offer them the best opportunities for a normal environment. Some children near the age of adolescence showed a precocious development of sex drives, with a discrepancy in the development of the rest of the personality, and seemed best cared for in institutions that supervised their social life.

The presence of veneral disease, as occurred in many of the cases cited, introduces a special problem regarding their mental hygiene. The treatment of children with venereal disease in adult clinics and wards is frequently an important factor leading to behavior problems, even in children suffering from congenital syphilis or a sexual gonorrheal vaginitis. The young girls, when hospitalized, and the boys, when attending the venereal clinics, are brought into contact with undesirable adult associates. The treatment itself may lead to an unhealthy preoccupation with the genitals, especially in girls. Suitable and easily obtainable prophylaxis of this condition is possible by segregation of the child and an understanding of the problem by the attending physicians and nurses.

Summary

The cases of 16 unselected successive admissions of children who were referred by the children's courts or other agencies because of sexual experiences with adults are reported.

The age variation in the series was from 5 to 12 years. Eleven of the children were girls and 5 were boys. Six girls had vaginitis and one boy had syphilis. Physical examinations were otherwise essentially negative. Four children had superior intelligence, 2 were high grade defectives, and the average intelligence quotient of the remaining ten was 84.3.

The sexual relationships between the child and adult in these cases did not appear to depend solely on the adult. The child was either a passive or active partner in the sex relations with the adult, and in some instances seemed to be the initiator or seducer. Nearly all of the children had conspicuously charming and attractive personalities. It cannot be stated whether their attractiveness was the cause or effect of the experience, but it is certain that the sexual experience did not detract from their charm. Their emotional reactions were remarkably devoid of guilt, fear or anxiety regarding the sexual experience. There was evidence that the child derived some emotional satisfaction from the experience.

The increased sex interests retarded the development of some of the children, the reaction varying with their age. In the infantile stage, infantile behavior and interests were prolonged; in the early latency period, educability and social adaptions were handicapped; and in the prepuberty period, adolescent problem adjustment appeared. The hyperkinetic child became more difficult to handle and the mentally defective child was less amenable to training and social adjustment.

Treatment consisted of frank discussion of sex matters; the presentation of other means of expression in play, school and social activities; and sufficient demonstration of affection from the adults in the environment. Some children required prolonged institutionalization.

Some of the theoretical implications of this form of childhood sexuality are discussed.

BIBLIOGRAPHY

1. *Report of the Departmental Committee on Sexual Offenses Against Young Persons,* H.M.'s Stationery Off. London, 1926.
2. Humble, H. W. *Seduction as a Crime,* Columbia Law Rev. 21 :144, 1921.
3. *Sexual Offenses Against Young Children,* Health and Empire 10 :312 Dec. 1935.
4. Moll, A. *The Sexual Life of the Child.* Trans. by E. Paul, George Allen and Unwin. Ltd. London, 1923.
5. Abraham, K. *The Experiencing of Sexual Traumas as a Form of Sexual Activity,* 1907. Selected Papers. trans. by D. Bryon and A. Strachey. Hogarth Press. London, 1927, p. 47.
6. Klein, M. *The Psychoanalysis of Children.* Hogarth Press. London 1932.
7. Rasmussen, A. *Die Bedeutung Sexueller Attentate Auf Kinder under 14 Faren Fur die Entwickelung von Geisteskrankheiten und Charakteranomalien.* Acta Psychiat. et Neurol. 9 :351. 1934.
8. Rathsham, B. *Töchter in Blutschandeprozessen,* Krim. Mh. 10 :12. 1936.
9. Malinowski, B. *The Sexual Life of Savages in Northwestern Melanesia,* George Routledge & Sons, Ltd. London 1929.
10. Frazer, J. G. *Creation and Evolution in Primitive Cosmogonies,* Macmillan and Co., Ltd. London, 1935.
11. Freud, S. *Three Contributions to the Theory of Sex,* Trans. by A. A. Brill, Nerv. and Ment. Dis. Pub. Co. New York, 1930.
12. Hirschfeld, M. *Sex in Human Relationships,* John Lane, London, 1935.
13. Guyon, R. *Sex Life and Sex Ethics,* John Lane, London, 1933.
14. Seligman, C. G. *Anthropological Perspective and Psychological Theory,* J. of the Royal Anthr. Inst. 62 :193. July–December 1932.
15. Glover, E. *Common Problems in Psychoanalysis and Anthropology; Drug Ritual and Addiction,* Brit. J. Med. Psych. 12 :109, 1932.
16. Malinowski, B. *Sex and Repression in Savage Society,* Harcourt, Brace & Co., Inc. New York, 1927.
17. Strickland, C. F. *Child Marriage in India,* Eng. Rev. 50 :600, May 1930.
18. Rathbone, E. *Child Marriage in India,* Hibbert J., July 1931, p. 609.
19. Frazer, J. G. *The Golden Bough,* Abr. Ed., Macmillan Co. New York, 1925.
20. Roheim, C. *Roheim Research Number,* Internat. J. of Psychoanal., 13 :1, Jan.–Apr. 1932.
21. Briffault, R. *The Mothers.* Macmillan Co., New York, 1931.
22. Freud, S. *A General Introduction to Psychoanalysis.* Boni & Liveright, New York, 1926.
23. Isaacs, S. *Social Development in Young Children,* Harcourt, Brace and Co., New York, 1933.
24. Editorial. *Offenses Against Young Children,* Shield; 1 :12, Apr. 1932.

JUNE 3, 1977.

REPRESENTATIVE PETER RODINO: I am a 41 year old, mother of 4 children ranging in age from 13 to 21. I have always believed that "God is in His Heaven and all is right with His world" but after watching the Phil Donahue Show on child pornography I am not so sure. After hearing what some people will do to children as young as 3 years old for financial gain, I think even God would be appalled. I know that the reports of how children are abused made my skin crawl.

I have never written a letter to speak to an issue before Congress; but your name was mentioned as planning to conduct hearings into this revolting problem. Please bring this investigation before the public because I don't think many people know to what extent young people are being violated. When the issue is brought before the people and the extent to which it prevails and the damage that is being done to our youth, there will be a public outcry and perhaps some legislation will be passed to protect our children and their children from unspeakable perversion and unscrupulous ("people"?).

I can protect my own children, and I would like to protect other children who have no one to help them. You have the power; do the job that needs to be done.

MARY ALICE CASTELLI.

PORTLAND, CONN., *May 31, 1977.*

DEAR REP. CONYERS: In the Middletown Press on Tuesday Evening May 24, 1977 there appeared an article on Child Pornography.

I read this article through and I was shocked that there is not any laws on the books to protect our children.

You have several small laws that could be stretched to cover this type of thing, such as the contributing to the deliquency of a minor, etc. But there should very definitely be laws passed that deal directly with this large scale problem.

There should be a law passed to ban the printing and the sale of this rotten filthy material. These business people should be arrested and sent to prison because these type of people making these filthy publications, for the sale to citizens on our streets are corrupting our children that are being forced to pose and carry out these pornographic scenes. It matters to me that there is not a severe punishment for the people who are directly responsible for letting these youngsters pose for this material. I have children and I very strongly disapprove of this type of material being allowed on the market. These children who are being used in this filthy racket are being used and also abused. It's not fair to these children and it should be stopped immediately. These youngsters who are forced into this type of situation will be marked psycholigically and probably physically in one way or another for their entire life. It's not being fair to their constitutional rights that they are born into or receive right after birth, that these children are not directly protected from this type of filthy degrading situation. It will very definitely leave it's mark on these children.

I sincerely hope, not only for the sake of all my children, but for the sake of everyone elses children also, that you will pass laws immediately to protect these children, who are going to grow up marred for life. These children are our future leaders, for their sakes, please pass the laws we need to help protect them.

Sincerely yours,

EDNA SCHAEFER.

COLORADO SPRINGS, COLO.,
May 24, 1977.

Re: Dr. Judianne Densen-Gerber.

DR. JUDIANNE DENSEN-GERBER.
Chairman, Child Abuse Investigation Committee,
House of Representatives,
Washington, D.C.

DEAR SIR: It might be of interest to you to know that on March 8, 1977, in response to my letter of inquiry about helping the organization, I received a letter from the Odyssey Institute (Dr. Densen-Gerber's group), from a Frederick S. Cohen, Ex. Vice President. In this letter Mr. Cohen referred me to a Salt Lake City address and a Mr. Quenton Kolb. In that letter we were also referred to a Maj. Gen. E. Q. Steffes, USAF, Ret., who was the Colo. Spg., person "involved in State hearings on the issue of Child Abuse and Juvenile Justice and will probably be requesting our appearance in legislative hearings to be held later in the Spring. If these arrangements can be worked out I have requested Major General Steffes to contact you so that we may get together."

Following a long distance call to Mr. Kolb, and finally tracking down Gen. Steffes with much difficulty, we were told by Steffes that he "would be getting in touch with us around the first of the week." That was March 29, 1977. We have not heard from the Institute or Gen. Steffes since. Both were supplied with our address and phone number.

It seems incredible to me that following a good faith offer of assistance we were turned off completely by a promise to "get in touch with us." It is the first time I have ever offered my charitable services and not been taken up on the offer and asked for more than I quite often cared to give.

It appears to me that the organizational is self-defeating (as you stated on TV on May 23). The over-play of pornography is equivalent to identifying a salacious interest and saying "look, here it is in all it's glory—isn't it awful?" I wonder if the Institute isn't an organization that wants all chiefs and no indians.

Perhaps it is a well-intentioned organization, but the lack of interest on Steffes' part, or anyone else connected with the organization, to substitute for him, makes me wonder what its real purpose is. I attended a local child abuse seminar at the Broadmoor Hotel two weeks ago for two days and Gen. Steffes was not in attendance, nor was anyone representing the organization that I could identify. It is odd that an organization that is supposedly furthering the cause of legislation against child abuse is so obvious by its absence.

Could it be a "skim the cream off the top" money raising operation which is comparable to the child abuser and equally as repulsive?

Very truly yours,

MRS. G. R. SCHROEDER.

WEST COAST FILM PRODUCERS ASSOCIATION,
Hollywood, Calif., March 11, 1977.

Mr. DENNIS HERRICK,
Administrative Assistant to Hon. Dale E. Kildee (D-Mich), Cannon Office Building, Washington, D.C.

DEAR MR. HERRICK: We are most interested in seeing HR 39–13 and HR 39–14 passed into law as soon as possible. Surely there can be no valid reason why children should not be protected against sexual abuse. Any adult participating in or photographing children being abused sexually, physically, psychologically or any other way should be removed from society. Our organization has no tolerance for those who produce and/or distribute films and magazines showing the sexual abuse of children.

Since its inception, the West Coast Independent Film Producers Association has fought for the rights of the individual as guaranteed in the first amendment of the constitution. We have also fought against censorship because it presupposes an elite class of human, more gifted than the rest of us, who will tell society what it should see and read. Sexual abuse of children has no defense under these two concepts.

Our organization will help you in any way it can to get this needed legislation passed.

Yours very truly,

CHRIS WARFIELD, *Vice President.*

CONNETQUOT CENTRAL SCHOOL DISTRICT OF ISLIP,
Bohemia, L.I., N.Y., June 1, 1977.

HOUSE JUDICIARY SUBCOMMITTEE ON CRIME,
The Capitol, Washington D.C.

GENTLEMEN: The Board of Education of the Connetquot Central School District of Islip, at its meeting of May 24, 1977, unanimously passed the following resolution:

Whereas, it has come to the attention of the Board of Education of the Connetquot Central School District of Islip that a serious problem exists with regard to the use of young children in the manufacture and distribution of pornographic materials, and

Wheres, the Board of Education of the Connetquot Central School District of Islip appalls such conduct,

Now, therefore, be it resolved: That the Board of Education wishes to proclaim its opposition and directs the Administration to prepare letters and communications to all of those persons in elective office supporting the enforcement of present legislation and creation of new legislation, when necessary, and request the Legislative Action Subcommittee to involve itself in the dissemination of that information and to also seek the community's support in the form of correspondence to their elected officials.

Weare submitting it to you at this time for your information and as a guide for subsequent action.

Sincerely yours,

ALAN W. SUGARMAN,
Superintendent of Schools.
JOHN MUUSS,
President, Connetquot Board of Education.

M. DALE ENSIGN,
Washington, D.C., May 13, 1977.

Hon. JOHN CONYERS, Jr.,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CONYERS: I'm sure you are aware that moral pollution, in the form of hard core pornograph, continues to be shipped into our communities across state lines, in violation of the federal law prohibiting interstate transportation of obscene material. Our children are becoming desensitized to violence by TV, and getting a distorted view of sex from porn magazines and movies. Something must be done before the entire moral fibre of the nation breaks down.

It is no secret that organized crime controls 90% of the hard core pornography in this country. Vigorous enforcement of the law and upholding the U.S. Supreme Court obscenity decisions would contain pornographic traffic.

Recognizing President Carter's sincere interest in the moral health of our nation, I have written to urge that he spearhead a crackdown in the traffic of hard core pornography and organized crime in this country. I appeal to you to join the fight.

Most sincerely,

M. DALE ENSIGN.

CHIEF POSTAL INSPECTOR,
Washington, D.C., July 7, 1977.

Mr. HAYDEN GREGORY,
Counsel, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. GREGORY: Returned herewith is a corrected copy of testimony given by Mr. Similes and me on June 10, 1977, before the House Subcommittees on Crime and Select Education.

At the hearing, Congressman Railsback requested that we furnish the subcommittees the number of instances in which the Department of Justice declined prosecution. Our records indicate that the Inspection Service presented, during Fiscal Year 1976, 47 obscenity cases to the Justice Department. The Department of Justice declined to prosecute 22 of these cases as not meeting their criteria for federal prosecution.

I would like to take this opportunity to assure the members of the subcommittees that we share their concern over child exploitation and abuse and we are available to assist them in reaching their goal toward enactment of effective legislation to combat this demoralizing problem.

Sincerely,

C. NEIL BENSON,
Chief Postal Inspector.

NATIONAL CHILD LABOR COMMITTEE,
New York, N.Y., July 1, 1977.

HOUSE OF REPRESENTATIVES,
Crime Subcommittee of the Judiciary Committee, Cannon House Office Building, Washington, D.C.

TO WHOM IT MAY CONCERN: The National Child Labor Committee is conducting an independent investigation of the use of children in pornography. I would appreciate a transcript of the hearings conducted before the Crime Subcommittee and the Select Education Subcommittee concerning legislation introduced by Congressman John M. Murphy (D–NY) and Congressman Dale Kildee (D–Mich) which would prohibit the use of children in the production and marketing of pornographic materials. I understand it would be cited as the "Child Exploitation Prevention Act" and become an amendment to the "Child Abuse Prevention and Treatment Act."

I would also welcome any other written material relevant to this issue. Thank you for your cooperation.

Sincerely yours,

NAOMI SCHNEIDER,
Administrative Assistant.

Department of Psychiatary,
University of Maryland School of Medicine,
Baltimore, Md., April 12, 1977.

Mr. Art Kosatka,
Staff Aide to Congressman Murphy, Congress of the United States, House of Representatives, Washington, D.C.

Dear Mr. Kosatka: Thank you for the opportunity to review Congressman Murphy's proposed legislation. This is an area of considerable interest and concern to me. Unfortunately, little hard scientific data has been collected in this area. The information available is usually extrapolated from studies of sexual abuse of children and child abuse. Certainly, these studies show that children who are abused sexually or physically have a strong tendency to abuse their own children in a similar fashion when they become parents.

Of equal importance is the broader issue of proper child-rearing and its effect upon development. Children generally are trusting of adults and look to adults as protectors, models and teachers. When children are exploited their views of the world is distorted and their interpersonal relationships impaired.

Childhood sexuality is recognized as a universal, normal phenomenon in our society. Children show curiosity about their own bodies from infancy on. They begin playing "doctor" or "mothers and fathers" with playmates about age three to four when mutual exploration of each other's bodies takes place. This psychiatrists call Pre-Genital Sexuality, that is, it is not directed toward genital intercourse or sex. Once puberty and adolescence occurs this sex play becomes activated by the male and female hormones and genital sexuality develops.

Adults who dwell upon or molest pre-adolescent children are themselves still in a pre-genital state of sexuality. These adults usually feel incapable or frightened of adult sexual roles, thus prey upon small children to enhance the adult's feeling of sexual superiority.

The child is a helpless, unknowing victim to an adult's perversion. Exploitation of children in pornographic movies should be viewed as sexual misuse or abuse. It is a form of sexual molestation and may do irreputable harm.

My thoughts on adult pornography are quite liberal. For consenting adults I believe sexual preferences and practices are their own concern. Children are different. Children cannot be consenting. I am strongly opposed to the misuse of children in pornographic photography and to the sexual abuse of children in any form.

Please let me know if I can be of further help.

Sincerely,

Richard M. Sarles, M.D.,
*Associate Professor of Child,
Psychiatry and Pediatrics.*

National Labor Relations Board,
Washington, D.C., May 25, 1977.

Hon. Peter W. Rodino, Jr.,
*House of Representatives,
Washington, D.C.*

Dear Congressman Rodino: Please send me a copy of the transcripts with reference to obscenity (pornography) hearings which were held on the 23rd and 25th of this month.

Thanking you in advance.

Sincerely,

Earl D. Proctor,
Executive Assistant.

June 15, 1977.

Mr. Earl D. Proctor,
*Executive Assistant,
National Labor Relations Board,
Washington, D.C.*

Dear Mr. Proctor: To date, three sets of child pornography hearings have been held by the Subcommittee on Crime under Chairman John Conyers, Jr. The dates of those hearings were May 23, 24, and one day of hearings conducted jointly with the Select Education Subcommittee of the Education and Labor Committee on June 10, 1977. We have available at the moment only the rough, unedited transcripts. I have asked the staff to place your name on the mailing list and you will be sent a full set of the hearings when they are published.

As you are probably aware, the two bills involved in these hearings, H.R. 3913 and H.R. 7093 were not cast by the sponsors as "obscenity" or "pornography" legislation. As I understand it, the intention of the framers and the co-sponsors of the legislation was that the matter be handled more in the context of "child abuse" and along the lines of restrictions that apply under the child labor laws and the health and welfare prohibitions which are statutory. To that end, I am enclosing an inter-office memorandum on that point expressing the views of the bill's sponsors, along with copies of the two bills involved. As the memorandum notes, the language of the bill includes neither the word "obscenity" nor the word "pornography."

I would be interested in the views of the National Labor Relations Board on the rationale of the sponsors and the validity of handling in this manner child abuse as defined in the specific acts enumerated in the bills.

Best regards.

Sincerely,

PETER W. RODINO, JR.,
Chairman.

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., May 25, 1977.

HON. PETER W. RODINO, Jr.,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN RODINO: Please send me a copy of the transcripts with reference to obscenity (pornography) hearings which were held on the 23rd and 25th of this month.

Thanking you in advance.

Sincerely,

EARL D. PROCTOR, *Executive Assistant.*

JUNE 15, 1977.

MR. EARL D. PROCTOR,
Executive Assistant, National Labor Relations Board,
Washington, D.C.

DEAR MR. PROCTOR: To date, three sets of child pornography hearings have been held by the Subcommittee on Crime under Chairman John Conyers, Jr. The dates of those hearings were May 23, 24, and one day of hearings conducted jointly with the Select Education Subcommittee of the Education and Labor Committee on June 10, 1977. We have available at the moment only the rough, unedited transcripts. I have asked the staff to place your name on the mailing list and you will be sent a full set of the hearings when they are published.

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Best regards.

Sincerely,

PETER W. RODINO, *Chairman.*

SEXUAL FREEDOM LEAGUE,
San Diego, Calif., June 30, 1977.

DEAR CONGRESSMAN: The Sexual Freedom League is concerned about the climate of sexual hysteria and over reaction surrounding the pending legislation on child pornography. Since the beginning of the year, 30 separate bills have been introduced in the Congress. Additionally, extensive media and press coverage has given the impression that the situation is immediate and urgent. In fact, child pornography has existed for years. We think all the aspects and viewpoints have not been adequately considered.

The Supreme Court of the United States has held that nudity in and of itself is *not* obscene. Yet some of these bills would make nude pictures of children illegal. Regardless of how person are posed or what they are doing to themselves, it is still a question of nudity. We consider depiction of the human body educational, informative, and natural, regardless of the subject's age.

We support the right of parents to educate their children on sexuality. Many modern parents feel that sex education of their child is a birthright. Many of these same parents provide books, magazines, and films showing nudity and explicit material to their children. For example, the book, Show Me, A Picture Book of Sex for Children and Parents by Dr. Fleischhauer-Hardt would become illegal. It is presently being sold in fashionable and prestigious bookstores.

It should not be necessary to restate the First Amendment to the U.S. Constitution. However, many people would suspend these rights when the subject matter is sexual. We hold true that citizens have a right to possess all films, magazines, and books which the individual chooses. If these materials are not available locally, there should be no penalty for importing them from other countries where they are legal.

Furthermore, some of these bills violate a person's Constitutional right against self incrimination. They require record keeping of social security numbers, ages, and other information on the models.

Many people are fearful that there is a correlation between pornography and sex crimes. The Presidential Commission on Obscenity and Pornography concluded that the incidence of sex crimes was reduced with the legalization of pornography. Atascadero State Hospital presently treats hundreds of sex offenders. Their director recently stated on the CBS program "Sixty Minutes" that the viewing of child pornography does not cause sex crimes.

The S.F.L. position is that all sexual activity by consenting persons is an inalienable right. We are against any use of force, violence, intimidation, threat, or coercion against another person. It is not true that child abuse will cease by eliminating child pornography.

Another weakness of these bills is that the penalties for child pornography are far too harsh, inclusive, and will result in few convictions. For example, a person who commits a bank robbery will receive far less prison time than someone mailing photographs of their own child.

To make this material as illegal as heroin openly invites organized crime to enter the picture. It may result in police bribery, murders, kidnapping of children, white slavery, and burning of stores. As is the case with any contraband, a huge underground and blackmarket will emerge. At any rate, this material will be available despite the law. The huge market and demand for this material proves its popularity and acceptance. The enforcement and prosecution of any unpopular law results in expenditures of millions of taxpayers dollars. California saved 12½ million dollars during the last six months by the decriminalization of marijuana. Child pornography is a billion dollar industry with possibly between 300,000 and 600,000 child models now involved. These facts further demonstrate its popularity.

The S.F.L. recommends the following alternatives. We think the matter should be handled in a slow, cautious, and rational manner. The social climate of hysteria does not promote adoption of careful and reasoned legislation. The following steps would be helpful. (1) Take no precipitous action at this time. There are already adequate laws to handle the immediate situation. (2) Reestablish a commission of experts to investigate and recommend an appropriate course. (3) It is clear that teenagers are already giving or refusing sexual consent each time they go out on a date. Many teenagers are presently cohabitating with parental consent. At least for persons between 14 and 18, allow participation in pornography with parental consent. (4) Adopt legislation to lower the age of sexual consent to 15 years of age. (5) We think there should be no penalties for the retail outlet. The clerk or owner of a bookstore is in no position to examine every film, book, magazine, and picture in his establishment and should not be held criminally liable.

Respectfully yours,

DAN BROWN,
Coordinator.
FRANS GUEPIN,
Secretary.

HONOLULU, HAWAII,
March 15, 1977.

Re: S.B. No. 1408.

Hon. JOHN T. USHIJIMA,
President of the Senate, Ninth Legislature, Regular Session, 1977, State of Hawaii.

SIR: Your Committee on Judiciary to which was referred S.B. No. 1408, entitled: "A bill for an act relating to public health and morals, offenses related to obscenity.", begs leave to report as follows:

The purpose of this bill is to completely revise Hawaii's criminal laws relating to obscenity conforming them to the latest decision of the United States Supreme Court. It is also the purpose of this bill to expand and strengthen the prohibition against involvement of minors in the production, traffic and viewing of pornography.

Your Committee received testimony from the Office of the Prosecutor, City and County of Honolulu, and the Honolulu Police Department that the present obscenity statutes (Chapter 12, Part II, Hawaii Penal Code) are not being enforced because their constitutionality is in question. However, both agencies and several other parties testified in favor of passage of the proposals now contained in S.B. No. 1408, S.D. 1.

Your Committee has amended this bill to make a comprehensive bill on this subject matter by incorporating S.B. 1410 and S.B. No. 331 in it. As amended the bill primarily does the following:

1. Conforms the definitions of pornography to the tests articulated in *Miller* v. *California*, 413 U.S. 15, 93 S. Ct. 2607, 37 L.Ed. 2d 419 (1973);

2. Raises the definition of minors in this section from any person less than sixteen to eighteen so that all minors less than eighteen are protected from involvement with pornography;

3. Expands the definition of "sexual conduct";

4. Raise the penalty one step for most offenses in the area. Providing pornography to a minor or producing pornography using a minor is made a calss B felony.

Your Committee on Judiciary is in accord with the intent and purpose of S.B. No. 1408, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1408, S.D. 1 and be placed on the calendar for Third Reading.

Respectfully submitted,

MARY GEORGE,
(And 12 others).

WAIKIKI IMPROVEMENT ASSOCIATION, INC.,
Honolulu, Hawaii, May 25, 1977.

Re: House Judiciary Sub-Committee on Crime Inquiry Into the Use of Minors in Pornography.

Rep. JOHN CONYERS,
U.S. House of Representatives,
Cannon House Office Building, Washington, D.C.

DEAR REPRESENTATIVE CONYERS: The concern about the use of minors in pornography rose during the 1977 session of the Hawaii State Legislature also.

Please see enclosed copy of SB-1408, introduced by Senator Dennis O'Connor, which passed the Senate, but got bogged down in the House Judiciary Committee. Also, see enclosed remarks by me.

Very truly yours,

DONALD A. BREMNER,
Executive Vice President.

A BILL FOR AN ACT

RELATING TO PUBLIC HEALTH AND MORALS, OFFENSES RELATED TO OBSCENITY

Be it enacted by the Legislature of the State of Hawaii:

Section 1. *Purpose*—The purpose of this Act is to redefine pornography following the latest Supreme Court decision and to expand and strengthen the prohibitions against involvement of minors in the production, traffic and viewing of pornography.

Section 2. Section 712-1210, Hawaii Revised Statutes, is amended by amending the definitions of "material", "minor", "pornographic", "pornographic for minors" and "sexual conduct" to read:

"(2) 'Material' means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, *video tapes*, photographs, drawings, sculptures, and tape or wire recordings.

(3) 'Minor' means any person less than [sixteen] *eighteen* years old.

(4) 'Performance' means any play, motion picture film, dance, or other exhibition performed before an audience.

(5) ['Pornographic.'] '*Pornography.*' Any material or performance is ['pornographic'] '*pornography*' if [all of the following coalesce:

(*a*) Considered as a whole, its predominant appeal is to prurient interest in sexual matters. In determining predominant appeal, the material or performance shall be judged with reference to ordinary adults, unless it appears from the character of the material or performance and the circumstances of its dissemination that is designed for a particular, clearly defined audience. In that case, it shall be judged with reference to the specific audience for which it was designed.

(*b*) It goes substantially beyond customary limits of candor in describing or representing sexual matters. In determining whether material or a performance goes substantially beyond the customary limits of candor in describing or representing sexual matters, it shall be judged with reference to the contemporary standards to candor of ordinary adults relating to the description or representation of such matters.

(*c*) It is utterly without redeeming social value.]

(*a*) *The average person, applying contemporary community standards, finds that the work, taken as a whole, applies to the prurient interest, and*

(*b*) *The work depicts or describes, in a patently offensive way, sexual conduct and*

(*c*) *The work, taken as a whole, lacks serious literary artistic, political or scientific value.*

(6) '[Pornographic] *Pornography* for minors.' Any material or performance is '[pornographic] *pornography* for minors' if:

[(*a*) It is primarily devoted to explicit and detailed narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse: and:

(i) It is presented in such a manner as to predominantly appeal to a minor's prurient interest; and

(ii) It is utterly without redeeming social value for minors; or

(*b*) It contains any photograph, drawing, or similar visual representation of any person of the age of puberty or older revealing such person with less than a fully opaque covering of his or her genitals and pubic area, or depicting such person in a state of sexual excitement or engaged in acts of sexual conduct or sadomasochistic abuse; and:

(i) It is presented in such a manner as to predominately appeal to a minor's prurient interest: and

(ii) It is utterly without redeeming social value for minors.]

(*a*) *The average person, applying contemporary community standards, finds that the work, in any part, appeals to the prurient interest of minors, and*

(*b*) *The work depicts or describes, in a patently offensive way for minors, sexual conduct, and*

(*c*) *The work, in any part, lacks serious literary artistic, political or scientific value for minors.*

(7) 'Sexual conduct' means acts of masturbation, homosexuality, *sadomasochistic abuse, excretion*, lesbianism, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breasts of a female for the purpose of sexual stimulation, gratification, or perversion.

[(8) 'Sexual excitement' means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

(9) 'Sadomasochistic abuse' means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.]"

Section 3. Section 712-1211, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 712-1211 *Displaying* [*indecent matter*] *pornography for minors.* (1) A person commits the offense of displaying [indecent matter] *pornography for* minors if he knowingly or recklessly displays on any sign, billboard, *stand*, or other object visible from any street, highway, or public sidewalk [a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:

(*a*) Which reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitment or engaged in an act of sexual conduct or sadomasochistic abuse; and

(*b*) Which is presented in such a manner as to exploit lust; and

(*c*) Which is utterly without redeeming social value.] *any material, performance, visual reproduction, or printed matters which is pornography for minors.*

(2) Displaying [indecent material] *pornography for minors* is a [petty] misdemeanor."

Section 4. Section 712-1215, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 712-1215 *Promoting pornography for minors.*

(1) A person commits the offense of promoting pornography for minors if [:

(*a*) Knowing *knowing* its character and content, he disseminates to a minor *any* material, *performance, or printed matter,* which is [pornographic] *pornography* for minors[;].

[(*b*) Knowing the character and content of a motion picture film or other performance which, in whole or in part, is pornographic for minors, he:

(i) Exhibits such motion picture film or other performance to a minor; or

(ii) Sells to a minor an admission ticket or pass to premises where there is exhibited or to be exhibited such motion picture film or other performance; or

(iii) Admits a minor to premises where there is exhibited or to be exhibited such motion picture film or other performance.]

(2) Subsection (1) does not apply to a parent, guardian, or other person in loco parentis to the minor, or to a sibling of the minor, or to a person who commits any act specified therein in his capacity as a member of the staff of any public library.

(3) Promoting pornography for minors is a [misdemeanor.] *class B felony.*"

Section 5. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section appropriately numbered and to read as follows:

"*Sec. 712. Promoting pornography of minors.* (*a*) *A person commits the offense of promoting pornography of minors if he, knowing its character and content:*

(*1*) *Disseminates, produces, directs, participates or assists in any material or performance which is pornography for minors and which*

(*2*) *Employs, uses, permits, persuades, induces, entices, coerces or contains a minor engaging or assisting others to engage in sexual conduct.*

(*b*) *Promoting pornography of minors is a class B felony.*"

Sections 5. Chapter 712, Hawaii Revised Statutes is amended by adding a new section appropriately numbered and to read as follows:

"*SEC. 712–* DISPLACING PORNOGRAPHY OF MINORS. (*a*) *A person commits the offense of displaying pornography of minors if he knowingly or recklessly displays on any sign, billboard, stand or other object visible from any street, highway or public sidewalk any material, printed matter or performance which is pornography for minors and contains, uses, or presents a minor engaging in or assisting other to engage in sexual conduct.*

(*b*) *Displaying pornography of minors is a class C felony.*"

Section 6. Section 712—1216, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 712-1216 *Promoting pornography; prima facie evidence.* (1) The fact that a person engaged in the conduct specified by sections 712-1214 [or], 712-1215, *or 712–* is prima facie evidence that he engaged in that conduct with knowledge of the character and content of the material disseminated or the performance produced, presented, directed, participated in, exhibited, or to be exhibited.

(2) In a prosecution under section 712-1215, the fact that the person:

(*a*) To whom material pornographic for minors was disseminated, or

(*b*) To whom a performance pornographic for minors was exhibited, or (*c*) To whom an admission ticket or pass was sold to premises where there was or to have been exhibited such performance, or

(*d*) Who was admitted to premises where there was or was to have been such performance,

was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor."

Section 7. Statutory material to be repealed is bracketed. New material is in italic. In printing this Act, the revisor or statutes, need not include the brackets, the bracketed material, or the italic.

Section 8. This Act shall take effect upon its approval.

PORNO ZONING WON'T WORK

(By Donald A. Bremner)

Obviously, one of us is wrong on the porno-zoning issue. Either the "critics" like me and the other community groups are missing some practical effect of the proposed ordinance, or the Mayor and the Star-Bulletin have failed to evaluate it properly.

Certainly, a more extensive analysis than that contained in the Star-Bulletin's editorial, April 20, is necessary to decide whether the ordinance will be good or bad.

For instance, no mention was made of the fact that the ordinance, by legalizing such use, would foster new porno shops outside of the Hotel Street area. New ones would be prohibited from locating in the Hotel Street area by the 1,000 foot separation requirement.

No mention was made of the fact that the ordinance, in order to prevent a completely "wide open" situation for porno shops, prohibits hotels, bars, restaurants and liquor stores from locating within 1000 feet of one another.

A PROPOSED ORDINANCE TO CONTROL PORNOGRAPHY SHOPS BY ZONING WOULD LEGALIZE THEM AND ALSO FOSTER NEW PORNO SHOPS OUTSIDE THE HOTEL STREET AREA, BREMNER ARGUES

Such a provision poses an absolutely ridiculous situation for resort areas and businesses such as Waikiki, downtown, Ala Moana Shopping Center. New resort areas planned by the City such as West Beach would be impossible under such a provision. If something like Aloha Stadium were to be built under the ordinance, the concession stands serving beer would have to be the length of a football field apart.

In addition every restaurant, bar, hotel in Waikiki, and *all* others which are within 1000 feet of another, would become non-conforming uses if the ordinance passed. Such a situation would unduly restrict their future activities and require them to get a variance for all expansions and changes. Such a situation would be intolerable.

Also, no mention was made of the fact that the ordinance would solidify the legality of the existing porno-shops. For the good of our future, WIA is working to get rid of the objectionable trash that is peddled from the so-called adult bookstores. Under the Mayor's ordinance, the shops in Waikiki would be "grandfathered" in place with a legal sanction and will be doubly difficult to alter.

Under zoning law, they would become legal non-conforming uses and Hawaii's statutes prevent the elimination of non-conforming uses. The combined effect of the ordinance and general zoning law would be to grant five or six porno outlets in Waikiki an exclusive right to continue indefinitely. Why would public policy wish to cater to these questionable vested interests to such an extreme?

The editorial also stated that "nobody is doing anything about closing them (porno-shops) down." As I explained to your executive staff recently, the way to close down smut peddlers is the way that other states are accomplishing it.

Hawaii's obscenity law needs to be brought up to date with the U.S. Supreme Court standards of 1973–74. Such an amendment has been unanimously approved by the State Senate for the last two legislative sessions.

However, the bill in both cases has been "killed" by a few State representatives in the House Judiciary Committee. Unfortunately, such lack of action exhibits a "soft-on-pornography" attitude, which works to sustain pornography in Honolulu. Other areas, U.S. as well as foreign, have been able to shut down hard-core porno palaces. We should be able to do it in Honolulu too.

Censorship is not an issue in the area of hard-core pornography since we all know that such "junk" is not protected by the First Amendment. The implication that the general public should suffer unbridled exposition by abusive, filthy, sick smut in order to satisfy a misplaced concern about censorship, is unacceptable.

If the public needs convincing on this score, all they have to do is force themselves to view some examples of what we are talking about from the mecca of "free expression," Denmark.

The photographs of what appear to be six-year-old females, engaged in intercourse with other children, adults and animals, are contained in a Danish publication which is available at a Waikiki "adult bookstore" and would enable everyone to form a clear opinion on obscenity.

Denmark, of course, is the country to which everyone points when they want to rationalize pornographic permissiveness with the implication that it does no harm, or that it is indeed, healthy for society. Denmark, where it has recently been learned that the incidence of rape has increased by 140 per cent in eight years. Our values are somewhat askew if we continue to protect smut while overlooking the gross exploitation and abuse of minors which is practiced in the name of pornography.

Other examples of "pornographic expression" can be easily obtained by any one of their children in retail outlets such as, supermarkets, drug stores, department stores and news stands in public places around Hawaii. Although it may be a repulsive thought, it would be worthwhile for the public to take a closer look at this material to see just how bad it is.

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